

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-7062

United States Court of Appeals
For the Second Circuit

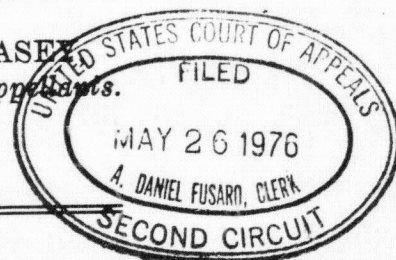
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MARIA NURSE, *et al.*,
Plaintiffs-Appellants,

DARLENE K. WILLIS, individually and on behalf of
all others similarly situated,
Plaintiff-Intervenor,
against

ALLIED MAINTENANCE CORPORATION, *et al.*,
Defendants,

SHEA GOULD CLIMENKO KRAMER & CASEY
Appellants.



APPENDIX

SHEA GOULD CLIMENKO KRAMER & CASEY
Attorneys for Plaintiffs-Appellants
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PAGINATION AS IN ORIGINAL COPY

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A 001

RELEVANT DOCKET ENTRIES

- 11-7-74 Filed complaint and issued summons.
- 10-3-75 Filed pltf's notice of motion pursuant to rule 24 for leave to intervene ret. 10-16-75.
- 10-3-75 Filed pltf. affdvt. in support pltf's motion for intervention in Nurse and her motion for reconsideration and rehearing.
- 10-3-75 Filed pltf. memorandum of points and authorities in support of motion for intervention in (74 civ 4889)
- 10-15-75 Filed def's affdvt. of Emanuel Dannett in response to pltf's motion for intervention in the "Nurse" action.
- 10-23-75 Filed pltf's affdvt. in opposition to motion of Darlene K. Willis to intervene as pltf.
- 2-17-76 Filed Order to Show Cause-for disqualification of counsel, injunction, and TRO.
- 2-18-76 Filed Order on document 157 of 75 CIV 955 Order on basis of the undisputed facts presented at the hearing on 2-17 and 18, 1976, it is the court's opinion that the representation of pltf's by Shea Gould Climenko Kramer & Casey presents a clear conflict of interest. Counsel have agreed upon a seven point stip. which the court accepts. Upon its own motion, this court disqualifies Shea Gould Climenko Kramer & Casey from further representation of pltf's in these proceedings So Ordered--Stewart, J.
- 2-20-76 Filed pltf's notice of appeal to the U.S.C.A. for Second Circuit from an order entered on 2-18-76 mailed copies to Michael D. Kaufman, Isabelle Katz Pinzler, Proskauer Rose Goetz & Mendelsohn, Rosenman Colin Freund Lewis & Cohen, Lord, Day & Lord, Kelly Drye & Warren, Graubard Moskovitz McGoldrick, Simpson Thacher & Bartlett, Dreyer and Traub, Seward & Kissel, Halperin Schivitz Scholer, Mudge, Rose, Gurtrie & Alexander, Present & Present, and Cravath, Swaine & Moore.

- 2-26-76 Filed transcript of record of proceedings, dated February 17-76 (also filed in 75 Civ. 955).
- 2-26-76 Filed transcript of record of proceedings, dated February 18-76 (also filed in 75 Civ. 955).
- 2-26-76 Filed notice of supplemental record on appeal has been certified and to the U.S.D.S. C.A. for the Second Circuit on 2-26-76.
- 3-3-76 Filed memorandum. Since the hearing on the issue of disqualification is not an adversary proceeding, we invite all counsel in the case to appear at the hearing as amici-curiae in order to ensure that the court will have all the facts before it. So ordered Stewart, J. m/n
- 3-1-76 Filed JUDGMENT AND ORDER that the agreement of settlement is hereby approved and adopted as the judgment of this Court, as though fully set forth herein, in full settlement and compromise of the claims of the plaintiffs and that no party shall recover costs as against any other party -- Stewart, J.-- Judgment entered - Clerk. (judgment on consent)
- 3-5-76 Pre-trial conf. held--Hearing concluded. Stewart, J.
- 3-11-76 Hearing contd from 3/5/76.
- 3-12-76 Hearing contd from 3/11/76 and concluded.

ORDER APPEALED FROM

A 003

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DARLENE K. WILLIS, individually and on :
behalf of all others similarly situated, :

Plaintiff, :

-against- :

ALLIED MAINTENANCE CORPORATION, et al., :

Defendants. :

----- x
MARIA NURSE, et al., :

Plaintiffs, :

-against- :

ALLIED MAINTENANCE CORPORATION, et al., :

Defendants. :

ORDER

----- x
Undisputed facts

On the basis of the information presented at the hearing on February 17 and 18, 1976, it is the court's opinion that the representation of plaintiffs by Shea, Gould, Climenko & Kramer presents a clear conflict of interest. Counsel have agreed upon a seven point stipulation which the court accepts. Upon its own motion, however, this court disqualifies Shea, Gould, Climenko & Kramer from further representation of plaintiffs in these proceedings.

SO ORDERED.

/s/ Charles E. Stewart
United States District Judge

Dated: New York, N.Y.
February 18, 1976.

No.15 2-24-76

76-7062

C 20

ORDER REMANDING ACTION

A 004

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-fourth day of February, one thousand nine hundred and seventy-six.

-----x
Maria Nurse, et al.,
 Plaintiffs-Appellants, :
 v. :
Darlene K. Willis, individually and :
on behalf of all others similarly :
situated, :
 Plaintiff-Intervenor, :
 v. :
Allied Maintenance Corporation, et al., :
 Defendants, :
Shea Gould Climenko Kramer & Casey, :
 Appellants. :
-----x

It is hereby ordered that upon consideration of the motion made herein by Shea Gould Climenko Kramer & Casey counsel for the appellant by notice of motion dated February 20, 1976 for a stay pending appeal and for a preference that: the appeal shall be continued; that the action be and it hereby is remanded under the rules for the limited purpose of adducing additional proof on the issue of disqualification; that the stay be and it hereby is continued without prejudice to the rights of any of the parties to assert the disqualification as pertains to attorney fees or any other portions of the case and that the agreement relative to non-communication with the union is continued on Mr. Milton Gould's representations.

A. Daniel Fusaro
Clerk

By: Edward J. Guardaro
Senior Deputy Clerk
*

Before: HON. JAMES L. OAKES

HON. ELLSWORTH A. VAN GRAAFEILAND
Circuit Judges

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA NURSE, MARY LANHAM, ALBERTA PARKINS,
JADWIGA NOWACZYK, ANNA ROKOWETZ, BESSIE M.
JOHNSON, DAISY JONES, MAGGIE HORTON, RUBY
KING, NORMA WELLESLEY, MARIA RIVERA,
EUGENIA MELNYCZENKO, OZZIE THREATT, CAROLYN
SIMMONS, MARIELA TAMAYO, REBECCA SANCHEZ,
NETTIE LEAK, SARAH DAVIS, ANN BELLINA,
MARGARET TAYLOR, FRANCES NIECHWIADOWICZ,
MARY SPELLER, CARRIE BULLOCK, ROSALBA AVILA,
STEFANIA KUSZTALA, SUSANA TIPTON, JESSIE
BUSUTIL, LUNICHTHA MILLER, and SIDALIA DE
LA VEGA, on behalf of and for the benefit
of themselves and other employees of the
defendants similarly situated,

Plaintiffs,

-against-

ALLIED MAINTENANCE CORPORATION, STATE WHITE-
HALL CORPORATION, 55 BROAD ST. COMPANY,
MADISON SQUARE GARDEN CENTER, INC., WILLIAM
KAUFMAN, BANK OF NEW YORK, U.S. FIRE INSURANCE
COMPANY, JACK D. WEILER, BANK OF AMERICA,
CUNARD STEAMSHIP CO., LTD., AARON LEVINE,
ANDROS BROADWAY, INC., 176 BROADWAY CORPORA-
TION, HELEN ROMMEL WANCURA, KEYSTONE ASSOCI-
ATES, FORD FOUNDATION, UNITED ENGINEERING
TRUSTEES, INC., 10 EAST 53 ST., INC., 579
EQUITIES INC., NEW YORK LIFE INSURANCE COM-
PANY, GETTY OIL COMPANY MANUFACTURERS HAN-
OVER TRUST COMPANY, 270 PARK AVENUE CORPORA-
TION, CHEMICAL BANK, GARY SHAPIRO, SHELDON
H. SOLOW, SAMUEL J. LEFRAK, HARVEY L. LEVINE
and C I T FINANCIAL CORPORATION,

Defendants.

74 Civ. No. 4889
(C.E.S.)

JUDGMENT

Upon the Agreement of Settlement dated as of June 12,

1975 entered into by the Plaintiffs (except those plaintiffs
listed on Schedule A) and Defendant Allied Maintenance Corporation
and annexed hereto as Exhibit A; the approval of said Agreement
of Settlement by the Department of Labor, dated February 27,
1976; and all prior proceedings herein; and the Court having
reviewed the Agreement of Settlement and having found the same to

JUDGMENT

be fair, equitable and appropriate for its approval; and the parties having otherwise waived findings of fact and conclusions of law and without any admission on the part of Defendant and Third-Party Defendants of any wrongdoing, it is

ORDERED, ADJUDGED AND DECREED that such Agreement of Settlement is hereby approved and adopted as the judgment of this Court, as though fully set forth herein, in full settlement and compromise of the claims of the Plaintiffs and that no party shall recover costs as against any other party.

Dated: New York, New York
February 27, 1976

Richard L. ...
U.S.D.J.

We consent to the entry of the foregoing judgment.

SHEA GOULD CLIMENKO KRAMER & CASEY

By: *David ...*
Attorneys for Plaintiffs
330 Madison Avenue
New York, New York 10017

GRAUBARD MOSKOVITZ MCGOLDRICK BARNETT &
HOROWITZ

By: *Robert ...*
Attorneys for Defendant Allied
Maintenance Corporation
345 Park Avenue
New York, New York 10022

Dated: New York, New York
February 27, 1976

JUDGMENT ENTERED

Richard L. ...
CLERK

1 cmsr

2 people what they think.

3 THE COURT: All right. Well, you know the basis
4 for my thinking.

5 MR. FINNERAN: I know your basis as to me and
6 that I think we can have a hearing on and have an appeal
7 on.

8 THE COURT: All right. We will talk about
9 that tomorrow morning.

10 MR. FINNERAN: Yes, your Honor. And, your
11 Honor, maybe what might be a good suggestion, if I may
12 render it to your Honor, there are very important issues
13 raised as to our firm and as to our relationship. I
14 think probably we would like to introduce evidence and
15 what-have-you in the matter.

16 THE COURT: You don't have much time before--
17 one o'clock tomorrow.

18 MR. FINNERAN: Well, I know that.

19 THE COURT: We will do what we can.

20 MR. FINNERAN: All right, your Honor. What I
21 was going to suggest is maybe you adjourn my hearing
22 before one o'clock tomorrow, possibly extend --

23 THE COURT: Well, let's get started tomorrow
24 and see where we go.

25 MR. FINNERAN: You are putting me in a unique

1 cmsr

2 disadvantage, your Honor.

3 THE COURT: You are proposing that we adjourn
4 the meeting tomorrow?

5 MR. FINNERAN: No, no, adjourn my hearing
6 tomorrow. I am restrained, you tied me up, you bound and
7 gagged me. I am restrained. Why don't we have my
8 hearing in some semblance of reasonable time?

9 THE COURT: Yes, I understand, Mr. Finneran,
10 that you are under the gun very much here.

11 MR. FINNERAN: Yes, your Honor.

12 THE COURT: Let's plan to meet at ten o'clock
13 tomorrow morning and we will see where we go from there.
14 I am certainly not disposed to require you to proceed
15 when you are totally unprepared. It seems to me, however,
16 the question is a fairly simple one and we ought to be
17 able to deal with it tomorrow morning. Let's try to do
18 it. If we can't, we can't. All right.

19 MRS. LOWY: Your Honor, may we deem service
20 complete upon the relevant parties all of whom have
21 appeared today, and service on the other parties to
22 the Nurse action to be made by mail?

23 THE COURT: Well, Mr. Finneran, have you been
24 served?

25 MR. FINNERAN: I was served down the hall with



1 6 mksr

2 I think that is the only comment I have to make
3 on that; otherwise we accept the stipulation.

4 THE COURT: Miss Lowy, would you read to me
5 No. 7 again, please?

6 MRS. LOWY: No. 7, the motion to be withdrawn
7 without prejudice, and it can be reinstated at any time on
8 telephone notice.

9 THE COURT: Do you accept that?

10 MRS. LOWY: Your Honor, we believe that --

11 THE COURT: Miss Lowy, if it would help you
12 any, I do not think you are retreating from your obliga-
13 tions to accept that proposal. I have confidence in the
14 counsel who are dealing on this matter. I do not think
15 that the question will come up again, unless there has
16 been an entirely different set of circumstances. I am
17 not urging it upon you. Apparently you have accepted it,
18 and I take it that is your view, is that right?
19 You accept that?

20 MRS. LOWY: Reluctantly, your Honor.

21 THE COURT: What?

22 MRS. LOWY: Reluctantly.

23 THE COURT: But you accep t it. Well, re-
24 luctantly or not, it is either "Yes" or "No" at this point;
25 you accept it?

1 7 mksr

2 MR. GOULD: Well, we all accept it or we go
3 back and talk again.

4 THE COURT: You accept it?

5 MRS. LOWY: I accept.

6 THE COURT: I think this is a good solution
7 to a very difficult problem.

8 I think, Mr. Gould, that your firm has gotten
9 itself, as happens to all of us, in a difficult position.
10 I think in terms of the future of this lawsuit you know
11 my feelings. I think your efforts and Mr. Finneran's
12 efforts to work out this problem are commendable. I am
13 encouraged to think from time to time that this job is
14 not so bad because I have good lawyers working for me who
15 try to do the right thing.

16 The zeal that a lawyer has for his client's
17 interest is, of course, important. I think it is important
18 also that a lawyer recognize that there comes a time
19 when, frankly, he is on both sides of the fence -- not
20 because of his zeal but just because of circumstances.

21 I am encouraged in my view that this is a good
22 job, because it is a good job, since I have good lawyers
23 who are willing to stand up and tell me what they think.

24 I commend all of you.

25 MR. GOULD: Thank you very much, sir.

1 bsrif

2 instructions to all of us to adduce additional proof on
3 the issue of disqualification.

4 I suggest, Mr. Shelton, that if you wish to do
5 so, perhaps you should proceed on that issue. Obviously,
6 if you do so it will be without any prejudice of any kind
7 to the positions you may want to take on this other matter
8 which we have just discussed, or any other matter.

9 MR. SHELTON: Well, your Honor, we are prepared --

10 THE COURT: I am particularly interested, Mr.
11 Shelton -- I have seen your firm's brief in the Court of
12 Appeals, and page 10 thereof, where you make six points,
13 which you preface by saying that had you been given the
14 opportunity to present evidence and argument to the Court
15 you could have established, and then you list these
16 six points.

17 Do you want to deal with that this afternoon?

18 MR. SHELTON: I would be glad to go forward,
19 your Honor, but I think in view of your Honor's ruling --
20 I think that I am prepared to go forward, if I have to --
21 I would -- one other matter I want to take up with your
22 Honor on the question of disqualification. May I proceed?

23 THE COURT: Yes, of course.

24 MR. SHELTON: In addition to the fact that I
25 think your Honor has already made up his mind about this,

1 bsrif

2 which is reason for disqualifying yourself, your Honor,
3 I understand, has expressed --

4 THE COURT: Mr. Shelton, as to whether or not
5 I made up my mind, I think I have done what I have done;
6 the Court of Appeals has done what it has done. And I
7 have to act from here on in light of what the Court of
8 Appeals has told me to do.

9 MR. SHELTON: Ye know, your Honor, we are all
10 human beings --

11 THE COURT: Can we go ahead, please.

12 MR. SHELTON: Sure.

13 The settlement hearing held on February 27,
14 1976, when your Honor approved the settlement and commended
15 counsel, Mr. Finneran of my firm was not here, and he was not
16 here because we were advised that your Honor didn't want
17 him to be seated at the counsel table during the settlement
18 hearing, and he thereby removed himself from your courthouse.

19 Those are the facts as I understand them,
20 and I think that that is another reason why your Honor
21 should disqualify yourself, because Mr. Finneran I antici-
22 pate will be a witness today at this hearing.

23 Your Honor, I am now filing with this Court
24 an affidavit pursuant to 28 USC Section 144, and I ask
25 that your Honor take no further steps in this matter,

1 bsrf

2 pursuant to the provisions of that statute.

3 THE COURT: Do you have a copy of the statute?

4 MR. SHELTON: I think it is right on your Honor's
5 desk.

6 THE COURT: On perhaps a wholly not technical
7 point, Mr. Shelton, the statute says the affidavit shall
8 be filed not less than ten days before the beginning of the
9 term at which the proceeding is to be heard.

10 Obviously this is being filed right now.

11 MR. SHELTON: Yes, your Honor, because we made
12 an application to your Honor, we didn't know about your
13 Honor's ruling, and if we had known about it we would
14 have done it sooner.

15 The earliest opportunity we had to do anything
16 about this matter was really this Monday. We didn't know
17 about your Honor's statement, so far as Mr. Finneran
18 was concerned, until Friday, which is just a week ago.

19 THE COURT: As to my response to Mr. Gould's
20 letter, my response was prepared on the day I received
21 the letter, and I had assumed that it was filed that day,
22 and I had assumed, obviously incorrectly, that you
23 received reasonably prompt notice.

24 The statute, Mr. Shelton, says, "Whenever a party
25 to any proceeding in a District Court makes and files
 a timely and sufficient affidavit ..."

1 bsrf

2 I think, unless there is something to the
3 ten day provision in the next paragraph, your affidavit
4 is timely. I'm not sure it is sufficient in terms of
5 the response to your letter -- well, we know what has
6 happened there.

7 MR. SHELTON: If your Honor will read the first
8 sentence of the second paragraph which I will now quote,
9 "The affidavit shall state the facts and the reasons
10 for the belief that the bias or prejudice exists and shall
11 be filed not less than ten days before the beginning
12 of the term at which the proceeding is to be heard,
13 or good cause shall be shown for failure to file it
14 within such time."

15 I think, your Honor, that within that -- the
16 verbiage of that rule I've shown you good cause.

17 THE COURT: Yes, I think, Mr. Shelton, I am not
18 going to make a serious point of that. The only point which
19 you made to me this afternoon which I didn't know about
20 before, one that we had a complete lack of understanding
21 on, I thought you knew about my response and you didn't.

22 MR. SHELTON: No, I didn't, your Honor. I
23 would respectfully ask that your Honor ask the Chief
24 Judge to assign another Judge to hear this matter as the
25 rules require.

1 bsrf

2 THE COURT: My difficulty, Mr. Shelton, is that
3 this is exactly what Mr. Gould asked me to do in his
4 letter. I worried about the problem for some time. I
5 can assure you I am not looking for work. But I reached
6 a conclusion, as I have stated, I reached the conclusion
7 in a very short order I issued that I have a duty to continue
8 to sit on this case at least for the time being, so I have
9 been over this in my own mind and I have reached
10 a conclusion that I should continue to sit on it, at
11 least for the time being.

12 MR. SHELTON: If your Honor please, I don't
13 think your Honor has a choice, and I really mean it. I
14 don't mean to put it to your Honor, but I think the
15 statute is very clear, it says, "Such Judge shall proceed
16 no further therein."

17 THE COURT: It also says, Mr. Shelton, "This
18 depends upon a timely --" let's forget about the timely,
19 "--and sufficient affidavit."

20 MR. SHELTON: Don't you think the other Judge
21 should determine whether it is sufficient, your Honor --

22 THE COURT: I think I should make an initial
23 determination.

24 MR. SHELTON: I would suggest, your Honor, that
25 the statute says that another Judge should make that

1 bsrf

2 determination.

3 THE COURT: Well, no, Mr. Shelton, obviously
4 the statute does not say that. It may be that it is
5 certainly a possible way to proceed, but the statute doesn't
6 say that.

7 MR. SHELTON: Well, your Honor, I have stated
8 the facts and reason why -- in my affidavit, why I believe
9 that your Honor should not sit. I'm sure your Honor
10 realizes that my affidavit -- at least I hope he does --
11 is filed in good faith because I really believe he
12 shouldn't sit here.

13 THE COURT: Of course I understand that.

14 MR. SHELTON: If your Honor takes that position,
15 then I would respectfully urge your Honor to hear this
16 matter no further. I have been a member of this Bar for
17 25 years. I began my career in this courthouse as a law
18 clerk to a District Judge and I just think this whole
19 proceeding is unfortunate, but I have signed the affidavit
20 after hearing all of the facts, and I urge your Honor
21 to have the Chief Judge assign this matter to another
22 Judge, as the statute definitely requires.

23 THE COURT: Anybody else like to be heard
24 on this?

25 (No response.)

1 bsrif

13

2 MS. LOWY: My name is Joan Bertin Lowy, I am
3 appearing as amicuscuriae today here by invitation of the
4 Court. I appeared in the other proceedings in this matter
5 as one of the attorneys for the plaintiff intervenor --

6 THE COURT: I can't hear you.

7 MS. LOWY: I appeared in the other proceedings
8 in this matter as the attorney for the plaintiff intervenor
9 Darlene K. Willis. We have not had an opportunity to
10 examine Mr. Shelton's affidavit, and I don't know whether
11 your Honor would like to hear the views of an amicus on
12 this particular issue, but we certainly could not do so
13 without express -- express any views without examining
14 the document.

15 THE COURT: All right. Anybody else like to be
16 heard at this time?

17 Mr. Shelton, I would like to take a couple
18 of minutes to try and find a copy of my order. Do you have
19 another copy of your affidavit?

20 MR. SHELTON: I would be glad to give her a
21 copy. I had not been advised that Ms. Lowy was appearing
22 here at the invitation of the Court as amicus.

23 THE COURT: Yes. I issued another order, Mr.
24 Shelton, on Tuesday or Wednesday, in which I invited
25 all parties to appear because I thought the matter was

1 bsrfr

2 of importance. You haven't seen that order either,
3 I take it.

4 MR. SHELTON: I would have thought your law
5 clerks would have called up counsel. That is what I
6 used to do when I was a law clerk.

7 THE COURT: Mr. Shelton, what has been done has
8 been done. We will take a short recess. Mr. Shelton,
9 in the meantime, can you show --

10 MR. SHELTON: I will be glad to show Ms. Lowy
11 a copy of my affidavit that I filed.

12 THE COURT: I will get copies of my orders
13 so we can all get brought up to date. We will take a short
14 recess.

15 (Recess.)

16 THE COURT: I have obtained copies of the two
17 orders which I have referred to a few minutes ago. One
18 of them is dated March 1st and reads as follows: I
19 construe the letter of March 1, 1976 from Milton Gould, Esq.
20 of Shea, Gould, Climenko, Kramer & Casey, as a motion
21 seeking that I recuse myself from further consideration
22 of the issue of disqualification of the Shea, Gould
23 firm in this action.

24 "Movant seeks disqualification on the ground
25 that I have already ruled on the question, and that

1 bsrif

15

2 therefore, as a matter of fairness, I should not consider
3 the issue any further.

4 "The Court of Appeals has remanded this action
5 to me for limited purposes of adducing limited proof on
6 the issue of disqualification.

7 "I can find no ground upon which to disqualify
8 myself and direct movant to the statutory section which
9 governs the matter at 28 USC Section 455."

10 Then I quote, "Those Federal Courts of Appeals
11 that have considered the matter have unanimously concluded
12 that a Federal Judge has a duty to sit." And "sit" is
13 emphasized in the original, "where not disqualified,"
14 and 'not disqualified' as emphasized in the original,
15 "which is equally as strong as the duty to not sit," and
16 'not sit' is emphasized, "where disqualified."

17 This is from the opinion of Laird against Tatum,
18 409 US 824 at page 873.

19 "In addition, I note that the Court of Appeals
20 would have remanded the case to a different District Court
21 Judge, as it has upon other occasions, if, for any reason,
22 the Court thought it inappropriate for me to continue to
23 hear this action. So ordered."

24 On the next day, March 2nd, I issued another
25 memorandum opinion, or memorandum, which states, "Since

1 bsrif

2 the hearing on the issue of disqualification is not an
3 adversary proceeding, we invite all counsel in the case
4 to appear at the hearing as amici curiae in order
5 to insure that the Court will have all the facts before it.

6 "I cite as a CF cite, Universal Oil Company
7 against Ruth Refining Company, 328 US 575."

8 It is the practice in this courthouse, when a
9 Judge issues an order, to file that order in the Clerk's
10 office, and it is the practice, as I understand it, of the
11 Clerk's office to notify counsel.

12 I am advised that both of these orders were filed
13 promptly by my staff with the Clerk. I also am advised that
14 the practice is for the Clerk's office to make sure that
15 counsel are notified. I'm not sure whether it is both
16 by way and means of a statement in the Law Journal and
17 a postcard, but to make sure that counsel are notified.

18 Your affidavit, Mr. Shelton, says that you
19 didn't get a response to Mr. Gould's letter. We have
20 covered that.

21 I issued an order on March 1 which I am advised
22 was filed in the Clerk's office on March 1st.

23 You also said in your affidavit, Mr. Shelton,
24 that you had been advised by Mr. Hecker that he had been
25 advised, and you don't say by whom, that I didn't want

1 bsrif

2 Mr. Finneran to be seated at the counsel table during the
3 settlement hearing on February 27th.

4 I never advised anybody that I didn't want Mr.
5 Finneran to sit at the counsel table on February 27th at
6 that hearing. I have checked with the members of my
7 staff and they tell me that they didn't advise anybody
8 to that effect.

9 Your affidavit states that you learned from Mr.
10 Hecker, who learned from somebody unnamed, that I made
11 this statement. I didn't make that statement.

12 MR. SHELTON: May I respond, your Honor?

13 THE COURT: Yes.

14 MR. SHELTON: One of your law clerks made that
15 statement to Mr. Israelson.

16 THE COURT: Which one of my law clerks.

17 MR. SHELTON: I don't know her name, your Honor.

18 THE COURT: Is Mr. Israelson here?

19 MR. MANNING: No, your Honor, Mr. Israelson is
20 ill today. I am from his firm. I am Mr. Manning.

21 THE COURT: As far as I am concerned, that state-
22 ment is not factually -- it just is not a correct statement.
23 I think, Mr. Shelton, if you want -- if you think it is
24 important to try to support it, you better do more than
25 an affidavit which says that you learned from Mr. Hecker

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2 who learned from somebody else who is not named that I
3 said something.

4 MR. SHELTON: Your Honor, all I can tell you
5 is that Mr. Israelson -- and Mr. Hecker will testify
6 under oath if you want him to, there is no probably about
7 that, he is here, advised Mr. Hecker that your law clerk
8 had said that you didn't want Mr. Finneran seated at the
9 counsel table.

10 THE COURT: All right, Mr. Shelton, I've heard
11 you say that.

12 MR. SHELTON: Mr. Hecker is here, your Honor.
13 I can put him on the stand. There is no problem about that.

14 THE COURT: Perhaps Mr. Hecker will say what you
15 say he will say. That doesn't make it true.

16 MR. SHELTON: That is why Mr. Finneran left
17 the hearing on the 27th.

18 THE COURT: Was anybody else from your firm
19 present?

20 MR. HECKER: My name is Bruce Hecker, your
21 Honor. I appeared before you last Friday in connection
22 with the disposition of the case.

23 THE COURT: What I am getting at --

24 MR. HECKER: I am merely identifying myself.

25 THE COURT: Yes, Mr. Hecker. What I am getting

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2 at is was your firm represented at that hearing?

3 MR. HECKER: I represented us, yes.

4 THE COURT: In fact you made the opening statement.

5 MR. HECKER: I entered my appearance and I
6 entered the appearance of my associate.

7 THE COURT: All right.

8 Mr. Shelton, I have taken a position on this
9 statement that you have made in your affidavit. I
10 didn't give directions to anybody to see to it that Mr.
11 Finneran was not present at the hearing.

12 MR. SHELTON: I didn't say that, your Honor.

13 THE COURT: I know you didn't. But I am also
14 advised nobody on my behalf did so.

15 Mr. Shelton, you will pursue that point, if
16 you wish to do so, in whatever way you want to. It seems
17 to me that I cannot find that your affidavit is sufficient
18 within the meaning of 28 USC 144. So I would like to pro-
19 ceed to what you have to tell me about the issue of
20 disqualification.

21 MR. SHELTON: Well, your Honor, if your Honor
22 please, I repeat what I have said before. I don't think
23 it is your Honor's province to make the determination as to
24 whether or not the affidavit is or is not sufficient. Your
25 Honor knows my views on the matter.

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2 If your Honor directs me to proceed I will. I
3 am ready. I have my witnesses here. But I would ask your
4 Honor to permit me to go to the Court of Appeals on this,
5 my affidavit, so that we can find out whether or not I
6 have to go on before you or whether or not the matter has
7 to go before another Judge.

8 THE COURT: It seems to me, Mr. Shelton, that
9 it is timely and appropriate at this time to proceed.
10 The Court of Appeals sent it back to me after hearing
11 argument on this the other day. They sent it back to me.
12 They could have said, "We won't send it back to Judge
13 Stewart. We will send it to somebody else."

14 They didn't do that. If you are ready to go
15 ahead let's go ahead.

16 MR. SHELTON: Your Honor directs me to proceed,
17 I take it?

18 THE COURT: Yes.

19 MR. SHELTON: All right.

20 I call Mr. Baumann as a witness.

21 THE COURT: I am reminded, Mr. Shelton, before
22 we swear the witness, why don't you stand by for a
23 second, I asked Ms. Lowy to take a look at your affidavit,
24 Mr. Shelton, and she had a chance to say what she might
25 want to say.

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2 Do you have anything to add, Ms. Lowy, after
3 seeing Mr. Shelton's affidavit?

4 MS. LOWY: No, your Honor, I can't make any
5 comment on any of the facts alleged in this affidavit.
6 I have no knowledge as to it.

7 J O S E P H B A U M A N N, called as a witness,
8 being first duly sworn by the Clerk of the court,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHELTON:

12 Q Mr. Baumann, what office do you hold with Local
13 32 J?

14 A I am president and business manager of Local 32

15 Q When did you become president, sir?

16 A June 1973.

17 Q Were you connected with that local before that?

18 A Yes.

19 Q In what capacity, sir?

20 A Prior to 1973, and from May 1970, as vice-presi-
21 dent.

22 Q I didn't hear the last thing.

23 A Prior to June 1973, and since May 1970, as
24 vice-president.

25 Q Did you attend any collective bargaining sessions

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Baumann-direct

2 in 1971?

3 A Yes, I did.

4 Q About how many members is 32 J composed of?

5 A Approximately 14,500.

6 Q How many of them are women and how many of them
7 are men?

8 A Approximately 11,500 are women and 3,000 are
9 men.

10 Q Can you tell me what jobs generally your employees
11 perform?

12 A Our members are engaged primarily in the cleaning
13 and maintenance of office buildings in the State of
14 New York.

15 Q I understand that you have collective bargaining
16 agreements with the Realty Advisory Board and also with
17 the Building Service League, is that correct?

18 A That is correct.

19 Q Would you explain the difference between the
20 two, sir?

21 A Well, the agreement with the Realty Advisory
22 Board covers members who are employed directly by building
23 owners and managing agents. Our agreement with the
24 Building Service League covers our members who are employed
25 by cleaning and maintenance contractors.

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Q About how many of your employees work in buildings in which the Realty Advisory Board has contracts?

A Let me see if I understand.

Are you asking how many of our members work directly for owners and agents?

Q That is correct.

A Approximately 2,500.

Q How many the other way?

A Well, approximately 7,500 work for contractors pursuant to contracts that the contractor has with building owners, and the other 4,500 work for contractors pursuant to contracts that the contractors have with individual tenants.

Q In your contracts with the Realty Advisory Board, have you any different type of classifications?

A We have only one classification in the RAB agreement.

Q What is that?

A Office cleaner.

Q How many classifications have you gotten in the Building Service League?

A In the Building Service League agreement we have two classifications, Maintenance Cleaner 1 and Maintenance Cleaner 2.

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2 Q Generally, can you tell us what Maintenance
3 Cleaning 1 consists of?

4 A Maintenance Cleaning 1 consists primarily of
5 the employees who are required to perform light duty clean-
6 ing, such as general housekeeping, which involves dusting
7 and damp wiping of furniture, sweeping up floors, emptying
8 of ashtrays, emptying of wastepaper baskets.

9 That primarily is the bulk of their duties.

10 Q How about a Maintenance Cleaning No. 2, what
11 do they cover?

12 A Maintenance Cleaner No. 2 covers primarily
13 the heavier aspect of cleaning, which involves high dusting,
14 washing of walls, washing and scrubbing of floors, waxing
15 of floors, moving of heavy furniture, removal of heavy
16 trash.

17 Q Insofar as the employees who are covered by your
18 RAB agreement are concerned, where you have only one type
19 of classification, are these mostly women or mostly men?

20 A Mostly women.

21 Q Do you have any men performing these duties?

22 A Well, we have -- we may have a few men in a
23 few office buildings, but the number is minimum.

24 Q But there is only one classification with
25 your Realty Advisory Board agreements, is that correct?

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2 A That is correct.

3 Q So that everybody who works pursuant to a
4 RAB agreement merely received one measure of pay?

5 A That is correct.

6 Q And that is the same measure, is that correct?

7 A That is correct.

8 Q And so far as the Building Service League is
9 concerned, you say that your classification is broken up
10 into two categories, light and heavy cleaning, is that
11 correct, sir?12 A Specifically, it is broken up into Maintenance
13 Cleaner 1, which is synonymous with light cleaning, and
14 Maintenance Cleaner 2 which is synonymous with heavy
15 cleaning.16 Q Were there different scales of pay for these
17 two classifications?

18 A Yes, there were.

19 Q Which one received the higher classification
20 pay?

21 A Maintenance Cleaner 2.

22 Q Pardon me?

23 A Maintenance Cleaner 2.

24 Q That is the heavy cleaning?

25 A That is correct.

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Baumann-direct

2 Q Is it true that most of the men were in the
3 heavy cleaning category?

4 A That is correct.

5 Q Were there any women in it?

6 A Yes, there are a few women who have elected
7 to take jobs in that category.

8 Q Did the union at any time at any point ever dissuade
9 women from taking jobs in the Maintenance 2 category?

10 A No. The union has never placed any restrictions
11 upon our members going from one classification to the other.

12 Q Let's go back to 1971.

13 You say you were present at the collective bar-
14 gaining sessions that took place there?

15 A Yes.

16 Q With whom were those negotiations?

17 A Those negotiations were with the Building Service
18 League.

19 Q Is this a copy of the agreement that was
20 negotiated?

21 A It is.

22 MR. SHELTON: I offer it in evidence. Your
23 Honor, shall I show this to "amicus curae"?

24 THE COURT: Not unless somebody stands up and
25 asks to see it, Mr. Shelton. I will assume that any counsel

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Baumann-direct

2 who are here who have an interest in this matter will
3 indicate that interest if you want to participate in any
4 way in this proceeding.

5 MR. SHELTON: I offer it in evidence.

6 I will have it marked Plaintiffs' Exhibit 1
7 in evidence.

8 May we have it deemed marked, your Honor, until
9 the clerk returns?

10 THE COURT: Yes.

11 (Copy of agreement marked Plaintiffs' Exhibit
12 1 deemed marked in evidence.)

xx

13 Q Can you tell me when these negotiations started
14 with the Building Service League?

15 A Well, about mid-February, 1971.

16 Q When did they end?

17 A We ratified the proposed settlement on April
18 8, 1971.

19 Q Can you tell us generally how the union works
20 in setting up its negotiating committee?

21 A Well, yes. Prior to the expiration of the
22 agreement the union will call a membership meeting of
23 all the members involved under that contract for the
24 purpose of electing a committee and formulating demands
25 for submission to the employer.

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Baumann-direct

2 Q How many people does that generally consist
3 of?

4 A Well, it varies. Under the Building Service
5 League agreement, approximately 4,500. Under the Realty
6 Advisory Board agreement approximately 10,000.

7 Q How many people would usually compose the
8 negotiations?

9 A On a committee? The Realty Advisory Board
10 committee normally numbers in the neighborhood of about
11 90 members and the Building Service League committee
12 normally in the neighborhood of about 50 or 55 members.

13 Q And that is all provided, is it not, in the
14 constitution and bylaws of Local 32 J?

15 A It is.

16 MR. SHELTON: I offer that in evidence, your
17 Honor, as Plaintiffs' Exhibit 2.

18 THE CLERK: Plaintiffs' Exhibit 1 received
19 in evidence.

20 (Plaintiffs' Exhibit 1 received in
21 evidence.)

xx

22 (Plaintiff's Exhibit 2 received in
23 evidence.)

xx

24 Q Now, in connection with the negotiations that
25 resulted in the execution of Plaintiffs' Exhibit 1

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Baumann-direct

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2 in evidence, which is the Building Service League agreement,
3 did the union make any demands during the collective
4 bargaining sessions that said pay classifications and
5 jobs be abolished?

6 A Yes.

7 Q Tell us what happened?

8 A We made a demand that any reference to sex as
9 to rates of pay be eliminated and that rates of pay be
10 based upon job duties.

11 Further, we provided in the agreement a provision
12 that there shall be no discrimination as to sex.

13 THE COURT: Mr. Shelton, do you have those two
14 exhibits? Can I see 1 and 2?

15 MR. SHELTON: I just want to call one --

16 THE COURT: If you are using it you go ahead.

17 MR. SHELTON: I will wait, your Honor.

18 THE COURT: Why don't you go ahead. I would like
19 to see them both in due course.

20 Q Did you negotiate a provision in the agreement
21 which appears on page 27, there shall be no discrimination
22 against any present or future employee by reason of race,
23 creed, color, national origin, union membership or any
24 unlawful discrimination because of sex?

25 A We did.

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Q Did you insist upon it?

3

A We did.

4

5

MR. SHELTON: Your Honor, may I hand this to the Court?

6

THE COURT: Please do.

7

(Pause.)

8

9

10

Q As a result of this negotiating session, you testified, as I understand it, there were two classifications, light cleaning and heavy cleaning?

11

A That's right.

12

13

14

15

Q At any point of time in all your time with the union did you make any effort, or did the union do anything to your knowledge to dissuade any women from going from a light cleaning job to a heavy cleaning job?

16

17

18

A We never made any such attempts, and we never placed any restrictions upon our members transferring from job to job.

19

20

Q Did there come a time when you negotiated an agreement with the Realty Advisory Board?

21

A Yes.

22

23

Q As I understand it, there were no separate job classifications in that agreement, is that correct?

24

A No.

25

Q I'm wrong or I'm right?

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Baumann-direct

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1 A You are right that there were no separate
2 duties spelled out for separate job classifications in that
3 agreement.

4 Q And what you did in effect was, you had one
5 classification, I take it, just office cleaners, is
6 that correct?

7 A Well --

8 Q Please explain. I want all the facts to come out.

9 A I misunderstood you. I thought you were talking
10 about the Building Service League agreement.

11 Q I am talking about the RAB agreement now.

12 A Will you ask the prior question again, please.

13 Q I thought that I said, and if I didn't I
14 apologize, I asked you when you negotiated the Realty
15 Advisory Board agreement, there was only one classification,
16 is that correct?

17 A That is correct.

18 Q And that classification was Office Cleaner?

19 A That is correct.

20 Q Is it true that the Office Cleaner job category,
21 under the Realty Advisory Board agreements corresponded
22 roughly with Maintenance 1, light cleaning?

23 A That is correct.

24 Q In the Building Service League agreements?

25

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Baumann-direct

2 A That is correct.

3 Q So that the people that were working as office
4 cleaners under the Realty Advisory Board agreements were
5 receiving roughly the same amount of pay as Maintenance
6 Class 1, light cleaning, under the Building Service League?

7 A That is correct.

8 Q Did you get a non-discrimination clause in
9 your Realty Advisory Board agreement?

10 A In January of 1972 we brought into that
11 agreement a clause similar to the agreement we had in the
12 Building Service League agreement of May 1, 1971.

13 Q You say you became president of Local 32-J
14 in 1973?

15 A That is correct.

16 Q Did you have occasion to negotiate with either
17 the Building Service League or the Realty Advisory
18 Board with respect to the collective bargaining agreements
19 that had been signed when you were -- after you became
20 president?

21 A Yes.

22 Q Tell us what happened?

23 A Well, after I became president, the first
24 negotiations that I actually conducted was with a contractor
25 by the name of the Mackey Company. The Mackey Company had

been a contractor who came from out of town, had no cleaning work in New York City, and was awarded a contract for the maintenance of the building 399 Park Avenue, which is the headquarters of National City Bank.

Q Before you had these negotiations with respect to Mackey, had you had any discussions with the BSL with respect to the job categories in the agreement?

Q Tell us what those discussions were or tell us
occasion for the discussions?

Q Was there a reason why this request was made?

A Yes. The reason was that in the negotiations of 1971, when we agreed upon Maintenance Cleaner 1 and Maintenance Cleaner 2 with the League, it was our understanding that Maintenance Cleaner 1 was light duty and

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Baumann-direct

Maintenance Cleaner 2 was heavy duty.

We found after the negotiating of that agreement that the employers were violating that provision of the agreement and therefore we insisted that the specific duties of each classification be reduced to writing.

Q In other words, you had heard reports from your members, as I take it, that they had been required to do heavy duty cleaning work even though they were being only paid for light cleaning?

A That is correct.

Q And by reason of that you negotiated the specifics of the two job classifications?

A That is correct.

Q And you reduced them to writing?

A That is correct.

Q Is this a copy of the agreement?

A It is.

MR. SHELTON: I offer it in evidence.

Your Honor, I show it to counsel.

(Pause.)

MR. SHELTON: Mr. Clerk, I offer this as Plaintiffs' Exhibit 3 in evidence.

(Plaintiffs' Exhibit 3 received in evidence.)

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Baumann-direct

2 BY MR. SHELTON:

3 Q Now, did the written agreement with the BSL
4 resolve the complaints?

5 A No, the complaints still continued.

6 Q At or about this time, did you have complaints
7 from the Realty Advisory -- from the people who worked
8 pursuant to the Realty Advisory Board contracts?

9 A The complaints were of a similar nature, that
10 our office cleaners in the RAB buildings were being
11 required to perform duties which were normally performed
12 by the 32 B porters which required a higher rate of pay.

13 Q In those buildings covered by the RAB agreement,
14 I take it that Local 32 B takes care of the porters, the
15 porters are members of that union?

16 A Local 32 B has jurisdiction in those buildings
17 over the cleaning and maintenance of public areas.
18 Those areas, the cleaning and maintenance of that work
19 is usually performed by men, because it usually involves
20 waxing and scrubbing of floors and so forth.

21 Q And is it accurate to say that the porters
22 in Local 32 received approximately the same amount of pay
23 as your Maintenance Class 2 people under your Building
24 Service League agreements?

25 That is correct.

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Baumann-direct

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Q I see.

Q Did you receive complaints from your employees who worked in buildings which were covered by Realty Advisory Board agreements that they were being required to perform heavy work?

A We did.

Q You have mentioned before that you had some negotiations with a company called Mackey.

A Right.

Q Did this happen on or about this time in the latter part of '73 or the early part of '74?

A We started our negotiations with Mackey in October 1973.

Q What position did the union take?

A The union took the position that we wanted equal pay for our female office cleaners as to the 32 B porters employed in the building. We wanted our female office cleaners to get the same rate of pay as the 32 B employees in that building that Mackey was going to take over at 399 Park Avenue.

Q Wasn't Mackey covered by the agreements that you had already negotiated with the Realty Advisory Board?

A Mackey had no contract.

Q So you had an opportunity for the first time,

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Baumann-direct

2 again, to negotiate a contract directly, is that correct?

3 A We did.

4 Q Was Mackey willing to pay the cleaners in
5 your union the same amount of money as they were paying
6 the porters in Local 32 B?

7 A They weren't.

8 Q Did you negotiate in an effort to get it?

9 A We negotiated for approximately four months.

10 Q Did your people go on strike?

11 A At the end of January, 1974 our people struck
12 the First National City Bank.

13 Q How long did they stay on strike?

14 A Seven weeks.

15 Q Did the union pay them?

16 A The union paid them their full wages.

17 Q How much money did it cost the union?

18 A \$70,000.

19 Q What was the result of the strike?

20 A The result of the strike was that we achieved
21 half the differential. The differential at that time was
22 46 cents an hour and we were able to achieve half
23 that differential and our people in that building then
24 received 23 cents an hour more than the rest of the
25 buildings.

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Baumann-direct

2 Q Did you still get complaints from your employees
3 that your people who were told to do light cleaning work
4 were being required to do heavy cleaning work?

5 A Complaints still persisted.

6 THE COURT: The complaints what?

7 THE WITNESS: Still persisted.

8 Q Was the union able to have enough supervisory
9 personnel to check these complaints?

10 A No, there was no way in which we could check
11 those complaints. 14,500 people, there is just no way in
12 which we could police it.

13 Q What did the union decide to do?

14 A Well, on or about the time that we were involved
15 in our difficulties with the Mackey Company, with the
16 complaints persisting as to people being required to
17 perform the duties of the heavier duty, the union made a
18 determination that the only way in which we could correct
19 this injustice, and protect the members of our union,
20 would be to make an all out effort to achieve equal
21 pay for all our members so that there would no longer be
22 a problem as to overlapping of duties; all the members
23 would receive the same rate of pay, male or female.

24 Q Was the subject discussed at any union meetings?

25 A The resolution was adopted by the local

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Baumann-direct

2 executive board at its meeting in February, 1974 and
3 was concurred in by the general membership at the general
4 membership meeting on February 23, 1974.

5 Q Did the union consult anybody with respect to
6 the problem?

7 A We did.

8 Q Who did you consult?

9 A We consulted general counsel for the union, the
10 Shea firm.

11 Q Shea, Gould, Climenko & Kramer at that point
12 in time?

13 A Right.

14 Q What did you ask them?

15 A We asked them to research and recommend to us
16 the most expeditious way in which we could achieve the
17 goal of equal pay for our members.

18 Q What did they tell you?

19 A They told us that the most expeditious way would
20 be for the members themselves to file lawsuits pursuant
21 to the Equal Pay Act against their employers.

22 Q Did the Shea firm tell you that if you brought
23 such an action you would have to get affirmative consents
24 by each member of the union who wanted to join?

25 A They did.

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Baumann-direct

2 Q And did you obtain those consents from the
3 employees?

4 A We did.

5 Q And subsequently, approximately 76 lawsuits were
6 commenced, isn't that correct?

7 A That is correct.

8 Q In this court?

9 A Yes.

10 MR. SHELTON: Those consents, your Honor, are
11 filed physically with the complaint.

12 In each of the actions that were commenced in
13 this court I would like to offer into evidence a form
14 of that consent. My understanding is that all the
15 individual plaintiffs have actually physically signed them
16 before we commenced the lawsuit.

17 I offer the form of consent in evidence as
18 Plaintiffs' Exhibit 4.

19 (Plaintiffs' Exhibit 4 received in
20 evidence.)

cx

21 THE COURT: Does this consent apply to a
22 particular action --

23 MR. SHELTON: These consents, your Honor, are
24 appended physically to the complaints in each of the
25 actions that my firm filed on behalf of the named

41

3 THE COURT: I'm not sure I can keep straight
4 in my own mind who was what. But these are the actions
5 other than the Willis action, is that right?

6 MR. SHELTON: Nothing to do with the
7 Willis action, Your Honor. These actions were commenced
8 a year before that.

8 THE COURT: The answer to my question is yes, it
10 is the actions other than the Willis action?

11 MR. SHELTON: That is correct, your Honor.

12 THE COURT: All right.

13 MR. SHELTON: This is what we did.

14 THE COURT: Right.

15 Q Before the union got these consents did they have
16 any negotiations with the BSL?

17 A Yes. We --

18 THE COURT: You may have asked this question,
19 or you may be about to ask it, Mr. Shelton, if you
20 asked it I didn't hear the answer, but let me ask the
21 witness --

22 MR. SHELTON: Sure, your Honor.

23 THE COURT: -- who went to the employees and
24 got this consent, was it members of the union?

25 THE WITNESS: Yes. Delegates and shop stewards

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Baumann-direct

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2 the union.

3 THE COURT: What did you do with the consents
4 after you got them, physically did you stick them in your
5 file or did you give them to --

6 THE WITNESS: We turned them over to the Shea
7 firm.

8 MR. SHELTON: Before these consents were filed,
9 did you have negotiations with the BSL?

10 THE WITNESS: We had.

11 Q Tell us about when that occurred?

12 A Well, the previous contract with the Building
13 Service League was to expire April 30, 1974, so we
14 entered into negotiations with the Building Service League
15 in about February, 1974.

16 Q The Building Service League, the people that
17 have these two categories, light and heavy cleaning,
18 isn't that correct, those are the people?

19 A Right, Maintenance Cleaner 1 and Maintenance
20 Cleaner 2.

21 Q Tell me, did the union -- what efforts did the
22 union make to get higher wages during those negotiations?

23 A Well, during those negotiations the union made
24 a demand upon the employers for equal pay. Specifically,
25 under the prior agreement, males were getting \$3.98 an

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Baumann-direct

2 hour and the females were getting \$3.55 and we asked in
3 those negotiations that all employees get an hourly wage
4 rate of \$4.50 an hour, both male and female.

5 Q This is so, even though they would continue
6 to perform both light and heavy cleaning and stay in
7 that classification, is that right?

8 A That's right.

9 Q In other words, what you tried to do was get
10 the same pay for different jobs?

11 A That is correct.

12 Q Without requiring the employees to change from
13 one job to another?

14 A That is correct.

15 Q What was the result of that demand, Mr. Baumann?

16 A Well, the result of that demand was that we
17 negotiated a wage increase and other fringe benefit
18 improvements, but we didn't achieve equal pay. We were
19 advised by the Building Service League that since they
20 are secondary employers and since the realty industry,
21 which are the owners and the managing agents of buildings,
22 were the primary employers, that there is no way in
23 which the Building Service League could give us equal
24 pay unless we got it from the Realty Advisory Board, from
25 the owners and the agents.

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Baumann-direct

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2 And they further emphasized that by saying that
3 the union took its people out on the street for months,
4 we would stay there and die there and still we wouldn't
5 get equal pay for the League because for them to give us
6 equal pay would simply put them out of business until
7 we got equal pay from the landlords.

8 Q Did you finally negotiate a clause with them,
9 though, that if you did get equal pay that they would pay
10 it?

11 A Right. The wage schedule negotiated with the
12 League would result in the League members paying equal
13 pay to the employees employed by the contractors members
14 of the League, if we achieved that through the Realty
15 Advisory Board.

16 Q So that in effect you solved your problem with
17 the Building Service League and the only problem you had
18 left was with the Realty Advisory Board?

19 A That is correct.

20 Q And is this a copy of the agreement that was
21 entered into between the union and the Building Service
22 League?

23 A It is.

24 MR. SHELTON: I offer it in evidence as Plaintiffs

25 Exhibit 5.

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Baumann-direct

2 Joan, would you like to see it?

3 MS. LOWY: No, thank you.

4 (Plaintiffs' Exhibit 5 received in
5 evidence.)

xx

6 Q You now had a promise from the Building Service
7 League that if you were to achieve equality in pay from
8 your people who were covered by the Realty Advisory
9 Board, they, too, would pay the same amount, is that
10 correct?

11 A The agreement so provides.

12 Q So really then, you just had to do something in-
13 sofar as the RAB people were concerned.

14 A That is correct.

15 Q I take it that you did that when you got
16 your members to commence equal pay actions against the
17 people who were covered by RAB agreements?

18 A Right.

19 Q And those were the actions in which my firm was
20 counsel to these individual members?

21 A That is correct.

22 Q And I take it that what you were doing when
23 you asked your employees, the members of the union who
24 constitute the union, to bring these actions, you were
25 trying to achieve equal pay for them, is that correct?

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Baumann-direct

A That's right.

Q I show you --

THE COURT: Mr. Shelton --

MR. SHELTON: Yes, your Honor.

THE COURT: -- is the reason for bringing the actions to enforce this agreement?

MR. SHELTON: Which agreement, your Honor?

THE COURT: Five, the last one, the amendment.

MR. SHELTON: No, the actions that were brought, your Honor, were brought against the RAB. We took the position in those actions, as your Honor must know, what the employers were doing was requiring our people to do different work than they were required and paying them lower wages.

We took the position that they were discriminatorily applying the agreements, and that therefore our people were entitled to equal pay. This was all done commencing in 1974, after we had gotten a commitment from the other group that if we got it from the RAB people these people would also give it to us.

THE COURT: Yes, Mr. Shelton, I understand that.

This agreement is an agreement with the Building Service League, and it says in effect --

THE COURT: It says that -- go ahead.

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Baumann-direct

2 MR. SHELTON: It says in effect that if we are
3 able to achieve equality in pay by our employees who are
4 covered by the RAB agreement, then the Building Service
5 League will also pay equal pay. That is the best we could
6 do. The reason for it, if I may explain to your Honor,
7 you see, the people who are covered by the Building
8 Service League only had portions of buildings. So if they
9 agreed to pay our people higher wages they would lose their
10 contracts, because then the other people would come in
11 and be able to do it on a lower base.

12 So that is why they told us, look, we won't
13 pay unless you get the others to pay.

14 We got a commitment from the members of the
15 Building Service League, in 1974, with this agreement.

16 THE COURT: Thank you.

17 MR. SHELTON: Am I clear, your HONOR?

18 THE COURT: Yes. I am now clear. Thank you.

19 Q I show you a document which is headed, "Executive
20 Board Meeting, Thursday, February 7, 1974."

21 Is this a copy of the minutes?

22 A It is.

23 MR. SHELTON: I offer this in evidence as
24 Plaintiffs' Exhibit 6.

25 (Plaintiffs' Exhibit 6 received in evidence.)

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Baumann-direct

BY MR. SHELTON:

Q After you had your executive board meeting did you go to your general membership?

A We did.

Q Did you have a meeting on February 23, 1974?

A Yes.

Q Is that a copy of the minutes of this meeting?

A It is.

(Plaintiffs' Exhibit 7 received in

evidence.)

Q Mr. Baumann, after you enter into a collective bargaining agreement, or before you enter into it, before it becomes effective, is it submitted to the membership for approval?

A It is.

Q Before it becomes effective, are all of these agreements subject to the membership approval?

A They are.

Q At this meeting, your general membership meeting which was held on February 23, 1974 --

THE COURT: Excuse me. Is that majority approval?

THE WITNESS: Yes, your Honor.

THE COURT: Majority?

THE WITNESS: Yes.

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Baumann-direct

THE COURT: Majority of everybody present at the meeting or --

THE WITNESS: Well, we notify all the members involved. Ratification is carried on the majority vote of the members present at the meeting.

Q Do you get many objections by your membership with respect to agreements that you have negotiated and present to the membership for approval; do many members object?

A No. In fact, the two agreements that I negotiated were both ratified unanimously.

Q Those agreements are the documents which are reflected in Plaintiffs' Exhibit 3 in evidence?

A Right.

Q And also Plaintiffs' Exhibit 5 in evidence, is that correct?

A Right.

Q Those were ratified unanimously?

A Yes.

Q By all the members?

A Yes.

MR. SHELTON: May I read, your Honor, from -- your Honor, may I read from Plaintiffs' Exhibit 7. This is a general membership meeting on February 23, 1974.

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Baumann-direct

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2 "In connection with the League negotiations
3 on February 1, 1974, we notified the Building Service League
4 of the expiration of our contract, which agreement expires
5 April 30, 1974, and have requested a meeting to commence
6 negotiations. In this hall on February 20, 1974, we had
7 a meeting of our members employed by contractors on
8 commercial jobs, and at this meeting we discussed contract
9 proposals and elected a negotiating committee of some 56
10 members, 29 women and 27 men.

11 "That committee will meet Monday, and they have
12 been so notified in our first meeting with the Building
13 Service League to commence negotiations. It has been schedule
14 for Thursday, February 28, 1974. President Baumann didn't
15 develop on all of the contract proposals but stressed
16 that we are requesting equal pay for all female members.
17 We are asking that our female members covered by that
18 contract receive the same rate of pay as our male members.
19 That is the primary target of these negotiations and it
20 is the primary target of the union's action at 399 Park
21 Avenue, as it will be the primary target for all female
22 members of Local 32 J."

23 There is a notation here "Applause."

24 THE COURT: What is that?

25 MR. SHELTON: "Applause." "As the minutes reflect,

the executive board has authorized the officers of the union to take whatever steps they deem necessary to accomplish our goal of equal pay for female members of the union and the union has consulted and spent several days in consultation with its attorneys discussing what legal steps are to be taken to obtain this end for all our people.

"We have a contract with the RAB until December 31, 1974 and we cannot legally amend that contract so that these employees will pay the woman the same rate as the men. But there are other legal actions which we have been advised by our attorneys we can take and we are now preparing to take. At this time it is not prudent to say just what they are before they are put into effect by our attorneys, but President Baumann assured the members that all legal steps to attain the goal of equal pay for all members will be taken."

I hand these to your Honor. There are other references, but I have just read a portion pursuant to your Honor's permission.

May I read a portion of the minutes of June 1, 1974?

Q Mr. Baumann, are these a copy of the general membership -- minutes of general membership meeting held on June 1, 1974?

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Baumann-direct

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A Yes.

MR. SHELTON: I offer them in evidence.

(Plaintiffs' Exhibit 8 received in
evidence.)

MR. SHELTON: I would appreciate if your Honor
would give me the opportunity to read a few extracts
from those minutes.

THE COURT: I haven't finished reading the previous
minutes, which, as you indicate, contain some other
things which are pertinent.

MR. SHELTON: Yes.

THE COURT: Could you give me just a minute?

(Pause.)

MR. SHELTON: Before I read from the Plaintiffs'
Exhibit 8, which is the membership meeting of June 1, 1974,
I would like to put a question to the witness.

Q Is it the practice to read the minutes of each
previous meeting at the next meeting?

A It is.

Q And at that point are the minutes of the previous
meeting ratified?

A They are.

Q Do you recall any objections to the minutes
of the meeting that was held on February 23, 1974?

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Baumann-direct

2 A No. There were no objections.

3 Q How about the minutes of the meeting held on
4 June 1, 1974?

5 A There were no objections to those either.

6 MR. SHELTON: I would like to read a portion of
7 Exhibit 8, your Honor. May I?

8 THE COURT: Yes.

9 MR. SHELTON: "Finally, on the advice of our
10 attorneys'--" and that is my firm, your Honor, --"the
11 union has now embarked on a program of filing class
12 actions against the individual employers as the most
13 expeditious manner to achieve equal pay for all our
14 female members.

15 "Last week the union started distributing to
16 our female members employed in office buildings consent
17 forms. He explained that under applicable law the union
18 itself can't file such suits, but such suits can only
19 be filed by the employees of the employer, and therefore,
20 in order for a member to be a party to the action against
21 her employer, and be included in any back pay awarded, it
22 is necessary for the member to sign this consent form."

23 That is the consent form that has already been
24 put in evidence, your Honor.

25 "For reasons of strategy, the landlords, as opposed

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Baumann-direct

1 to the contractors, were selected as the union's first
2 target because if we were to sue the contractors without
3 suing the landlords would simply cancel the contractors
4 out of the buildings and that would be the end of our
5 suit."
6

7 I am skipping now, your Honor.

8 "Our attorneys tell us this is the most
9 practical and expeditious way to achieve equal pay. Of
10 course, if we could do it more expeditiously without having
11 to pay anyone anything that would be wonderful, but this is
12 going to be a long drawn out legal procedure which our law
13 firm is going to have to file several hundred lawsuits
14 against several hundred different employees, and if you
15 want a firm to do a good job for you you cannot expect --"

16 THE COURT: Different employers, I guess it says.

17 MR. SHELTON: Did I misspeak, your Honor?

18 THE COURT: I thought you said employees.

19 MR. SHELTON: My tongue gets kind of twisted
20 sometimes. I meant employers.

21 "If you want a firm to do a good job for you
22 you cannot expect them to do it gratis or for a pittance.
23 This law firm is a very reputable and competent one
24 and has always represented the best interest of the
25 union and its members."

MR. SHELTON: A determination by the EEOC

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of probable cause.

Q Did the union participate in any of the hearings before the EEOC, before that determination was made?

A Not before the determination was made, no.

Q Did it present any testimony prior to the determination?

Q That is correct.

A We were never invited to.

Q Was it ever afforded an opportunity to be present?

A No, it wasn't.

Q Incidentally, did my firm ever represent Mrs. Willis?

A Yes.

Q When was that?

A Well, it was in, I don't remember the exact date, but it was sometime in 1971 when the union brought an arbitration proceeding against her employer, and she was represented by the union and by general counsel to the union, the Shea firm, and as a result of that arbitration she was reinstated to her job with the employer.

Q Did she ever complain to you that my firm represented her in an adverse way?

A No.

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Baumann-direct

2 Q Was she satisfied --

3 MS. LOWY: Objection. Hearsay. I don't think
4 Mr. Baumann can testify what Mrs. Willis did or did not
5 believe about the representation by the Shea firm.

6 MR. SHELTON: I asked whether or not the
7 witness ever heard from Mrs. Willis that we represented
8 her in any adverse way. That is not hearsay at all.

9 THE COURT: I will allow it. Go ahead, Mr.
10 Shelton.

11 MR. SHELTON: I believe the witness answered
12 never, your Honor.

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2 useful to pursue the point. But at the moment let's
3 go ahead.

4 MS. LOWY: Your Honor, may I clarify one matter,
5 that any finding here would not be binding insofar as
6 ultimate trial on the merits of the remaining issues
7 in Willis is concerned.

8 To that extent we have a very clear and strong
9 adversary interest.

10 THE COURT: The only thing I am interested in
11 at the moment, Ms. Lowy, is in determining what the Court
12 of Appeals have asked me to determine. That is the question
13 of disqualification.

14 All right.

15 BY MR. SHELTON:

16 Q After the union got these consents from its
17 members, did the Shea, Gould firm advise the union that
18 the union would be named as a defendant by the employers
19 if the employers were sued?

20 A They did.

21 Q What was the union told about that?

22 A They were told that there was very good pro-
23 bability that the union could be sued by the employers
24 and I believe the term they used was cross complaints
25 against the union.

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Baumann-direct

2 Q And in effect that is what happened, isn't that
3 true?

4 A That is correct.

5 Q Tell me what did the leadership tell the
6 executive board or the members about that subject?

7 A We informed the executive board and the members
8 that actions had been filed against the union and its
9 officers personally by the landlords against whom we had
10 filed suits.

11 Q Did the question come up as to whether or not
12 the Shea, Gould firm would represent the union if those
13 cross claims were asserted?

14 A There was no question.

15 Q Pardon me?

16 A There was no question about the Shea firm
17 representing the union.

18 Q Were you told by the Shea, Gould firm that
19 if there was a cross claim asserted against the union by
20 the employers that we will not be in a position to represent
21 you?

22 A I misunderstood the question. Yes. In fact,
23 the union had to retain separate counsel to defend
24 against the cross claims.

25 Q Did you have any discussions with your membership

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Baumann-direct

2 as to what would happen if any judgments were ever recovered
3 against the union on these cross claims?

4 A We did.

5 Q Tell me what did you report to the membership?

6 A We reported the probability of the cross claims
7 and the membership unanimously resolved that in that
8 event the membership would authorize an assessment against
9 the members to indemnify the union for any such claims.

10 THE COURT: Read back that answer, Mr. Reporter.

11 (Record read.)

12 Q In the course of discussion as to the objectives
13 of the unions to obtain equal pay for its members, did you
14 have any discussions with any union members about the
15 effect that might have on the type of job that they would
16 be required to do?

17 A Yes. The members were seriously concerned as
18 to whether they would be required to perform the same
19 task as the men in return for equal pay.

20 Q What did the members tell you about that possi-
21 bility?

22 A They said that they felt that they worked just
23 as hard as the men and that there should not be any
24 change in their job content in return for equal pay.

25 Q Effect, did they tell you that they didn't want

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2 to do the so-called heavy cleaning?

3 A Yes.

4 Q But they wanted the same pay, is that correct?

5 A They did.

6 Q Was that your objective?

7 A That was our objective, to achieve the same pay
8 without any change in the job content.

9 Q A point of time came, didn't it, after these
10 actions were commenced, when you negotiated a new collective
11 bargaining agreement with the Building Service League, is
12 that correct -- I'm sorry, with the Realty Advisory Board,
13 is that correct?

14 A We commenced negotiations with the Realty
15 Advisory Board in October, 1974.

16 Q That was long before the Willis suit had
17 commenced, isn't that correct?

18 A Yes.

19 Q How did the negotiations go on, will you tell us
20 what happened?

21 A Yes. Our primary thrust was to achieve equal
22 pay for the office cleaners as against the male counterparts,
23 the 32 B porters working in the building, and finally,
24 through nine months of negotiations, from October,
25 1974 through June, 1975, we finally hammered out an

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Baumann-direct

2 agreement with the Realty Advisory Board, providing
3 for equal pay in a graduated scale over the term of
4 the agreement. That agreement was subject to approval
5 by the Labor Department.

6 Q Is it true that the Department of Labor first
7 approved that agreement?

8 A In July of 1975 the New York Regional Office
9 of the Department of Labor approved that agreement.

10 Q Was there subsequently a withdrawal of that
11 approval?

12 A In September 1975 the Assistant Secretary
13 of Labor in Washington rescinded the New York letter and
14 withdrew its approval.

15 Q Did anyone tell you why that happened?

16 A Well, thereupon, we made a request to meet with
17 the Labor Department and ascertain from them why they
18 flipfopped, if you might permit the expression, and
19 we were given to understand that in order for the parties
20 to receive Labor Department approval, which the agreement
21 required, that the parties would have to provide for
22 immediate equal pay rather than over the term of the
23 agreement.

24 Q And did you thereafter recommence negotiations?

25 A We did.

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Baumann-direct

2 Q And was there a new agreement finally entered
3 into?

4 A There was.

5 Q And did it have any changes in it?

6 A Yes. The new agreement, which was finally
7 entered into between the union and the RAB in December,
8 1975, complied with the Labor Department's requirements that
9 we provide equal pay.

10 The Labor Department, in their position,
11 stated that equal pay should be provided in such a fashion
12 so as not to cost the industry any more than the prior
13 negotiated agreement, evidently because they took con-
14 sideration of the fact that the real estate industry in
15 New York City was in a depressed condition.

16 Q In effect, what happened was that the both
17 agreements provided for the exact same dollars, isn't
18 that correct?

19 A They did.

20 Q The only difference being that the equal pay
21 was put into effect at a later date so that you would
22 save some dollars up front and not have to pay all at
23 once, is that correct?

24 A That is correct.

25 Q And that satisfied the Labor Department?

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Baumann-direct

2 A It did.

3 Q That took place in the latter part of 1975?

4 A In December.

5 Q In December?

6 A That's right.

7 Q And then subsequent to that point of time there
8 was an agreement settling the Willis class suit, do you
9 recall that?

10 A Yes, there was.

11 Q Did you examine that agreement?

12 A We did.

13 Q Did Local 32 J originally oppose the
14 Willis agreement?

15 A We did.

16 Q Will you tell us why?

17 A We opposed the Willis agreement because the
18 Willis consent decree took away from our members benefits
19 which they would have enjoyed under the collective bargaining
20 agreement.

21 Q Tell us what those benefits were?

22 A Yes. Specifically, it took away their seniority
23 and it took away the protection of a clause in the agreement
24 which we referred to as the work of absentees clause,
25 whereby the female office cleaners received premium pay

1 in performing the work of an absentee cleaner without
2 having to put extra time in on the job, which condition
3 does not apply in the 32 B agreement, and under the Willis
4 consent degree, our female cleaners who are put on the
5 same basis as the 32 B male porters and therefore they would
6 be deprived of that benefit.
7

8 They would also be deprived of their company
9 seniority in that under our agreement our members enjoy
10 company seniority as opposed to building seniority,
11 which is the practice under the 32 B agreement.

12 Q And are you aware of the fact that subsequently
13 a stipulation was signed by counsel for Willis and
14 the defendants, other than the union in that action?

15 A Yes.

16 Q I think it was Mr. Shanzer.

17 A Yes.

18 Q And they agreed, didn't they, that nothing in
19 this so-called Willis settlement would affect the rights
20 of the union members under the collective bargaining
21 agreement which you had negotiated?

22 A Yes. We were aware of that.

23 Q Is it at that point that you withdrew your
24 opposition?

25 A We did.

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Baumann-direct

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1 Q Was this a real concern to you and your union
2
3 members?

4 A Very real. Had this continued in the Willis
5 agreement it could very well have been imposed upon the
6 rest of the industry by virtue of the fact that with the
7 rest of the industry we have a fair treatment clause
8 and the rest of the employers in the industry could demand
9 the same conditions.

10 Employees in the industry could demand the same
11 conditions, and this would endanger our position not only
12 for our employees employed by Allied but also for our members
13 employed in the entire industry.

14 Q Was the collective bargaining agreement ratified
15 by your membership?

16 A Yes.

17 Q Were there any objections?

18 A There were no objections.

19 Q Did the individual plaintiffs whom you have
20 been able to find all consent to the settlement?

21 A Yes. Well, if I may correct the statement.

22 Upon concluding the modified collective bar-
23 gaining agreement and equal pay settlement with the RAB,
24 we sent out to all our members a notice in five languages
25 notifying them of the modifications of the agreement and

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1 notifying them that if they had signed a releast to the
2 previous agreement, and if they didn't, after reading
3 this summary of the modified agreement, want to go along
4 with the modified agreement, they could, within 15 days,
5 revoke their consent to the agreement.
6

7 Q Was this said to your membership in five different
8 languages?

9 A It was. Out of approximately 11,000 members,
10 we only got four revocations.

11 Q Is this the form of consent that was originally
12 signed?

13 A It is.

14 Q Did that go out with this communication from the
15 union?

16 A It did.

17 MR. SHELTON: I offer it in evidence.

18 (Plaintiffs' Exhibit 9 received in
19 evidence.)

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20 MR. SHELTON: Your Honor, I ask that the consent
21 by non-plaintiffs, which we will supply, I don't have
22 it handy right now, be deemed marked in evidence as Exhibit
23 10. This is without objection. We will supply a copy at
24 a later point in time to the Court.

25 All right.

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Baumann-direct

2 MS. LOWY: No objection.

3 THE COURT: All right.

4 (Plaintiffs' Exhibit 10 deemed received in
5 evidence.)

6 Q Throughout this period, were the members of
7 the union kept informed of the status of these cases?

8 A They were.

9 Q This was done at meetings and through notices
10 that were sent out?

11 A Yes.

12 Q By the way, have you estimated the value of this
13 settlement to your members over the life of the agreement?

14 A Yes. Over the life of the agreement the office
15 cleaner who is working the average 30 hour per work week
16 would increase her wages over the term of the agreement
17 by some \$5,000.

18 This would be applicable to approximately 12,000
19 female members of the Local 32 J, so that we are talking
20 about 60 million dollars.

21 Q That is the agreement that the Shea, Gould firm
22 helped you negotiate for your members of the union?

23 A That is correct.

24 MR. SHELTON: I have a series of meetings of
25 the executive board, as well as a series of minutes of

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2 the meetings of the general membership of the union which
3 I would like to introduce in evidence. I would like the
4 executive board meetings to be marked in evidence as
5 Exhibit 11, as one exhibit, your Honor. They include the
6 meetings held on March 7, 1974, May 2, 1974, June 6, 1974,
7 July 9, 1974, August 1, 1974, September 5, 1974, October
8 1, 1974, November 7, 1974, December 5, 1974, December 18,
9 1974 and January 2, 1975.

10 An interoffice memo from Perry to Mr. Baumann which
11 are really attached to the meeting, I'm sorry, your Honor.
12 The minutes of the executive board meeting of February
13 6, 1975, March 6, 1975, June 9, 1975, August 7, 1975 and
14 an attachment thereto dated July 9, 1975, minutes of
15 October 7, 1975, an attachment, interoffice memo dated
16 October 7, 1975, December 9, 1975, an attachment dated
17 December 4, 1975, executive board meeting January 8, 1976.
18 An attachment January 5, 197, interoffice memo attachment
19 dated January 8, 1976, executive board meeting February
20 5, 1976, general membership meeting -- that doesn't
21 go in this pile.

22 That is it, your Honor. I would like these marked
23 Exhibit 11 in evidence. Here they are. I will provide
24 you with copies at a later date if you like.

25 MS. LOWY: Yes.

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2 (Plandtiffs' Exhibit 11 received in
3 evidence.)

4 MR. SHELTON: I would like there to be marked
5 in evidence as Plandtiffs' Exhibit 12, January -- minutes
6 of the general membership meeting January 12, 1974,
7 March 30, 1974, April 27, 1974, September 28, 1974, November
8 2, 1974, December 14, 1974, January 18, 1975, March 22,
9 1975, April 26, 1975, May 31, 1975, June 28, 1975,
10 September 27, 1975, November 8, 1975, December 13, 1975,
11 January 17, 1976, and I will supply counsel with a copy.

12 (Plandtiffs' Exhibit 12 received in
13 evidence.)

xx 14 THE COURT: Mr. Shelton, could you state for
15 the record, I am sure you did, but I missed it. What is
16 the date of this document that is in five different
17 languages?

18 I don't see a date on the document. I would
19 like to make sure the record indicates it. Maybe it is on
20 the document.

21 MR. SHELTON: It is not, your Honor, on the
22 document, but -- let me just check, your Honor. I do not
23 have the date here. I am advised that it is approximately
24 July or August of 1975. I will furnish the Court with
25 the exact date.

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Baumann-direct

2 THE COURT: I don't know that we need the exact
3 date.

4 MR. SHELTON: I'm sure counsel will agree that
5 what I have said is about right, July or August --

6 THE COURT: Why don't you find out.

7 MS. LOWY: It was -- August is close enough. That
8 document was the subject of the application for a preliminary
9 injunction last August.

10 THE COURT: All right.

11 MR. SHELTON: Your Honor, I would like to put
12 in as Exhibit 9-A a document entitled "Settlement Agreement
13 in Darlene Willis Complaint," which went out with Exhibit 9,
14 just to complete the record.

15 THE COURT: Yes, of course.

16 MR. SHELTON: I think there is no objection by
17 counsel, your Honor.

18 (Plaintiffs' Exhibit 9-A received in
19 evidence.)

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20 Q Mr. Baumann, I show you two documents, October
21 3, 1975 and one dated January 26, 1976, were these sent
22 out by the union?

23 A They were.

24 Q This explains the status of the matter, the
25 settlement agreement, is that correct?

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Baumann-direct

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A It does.

MR. SHELTON: I offer them both in evidence
as Exhibit 13 and 14.

MR. SHELTON: I ask that the document dated Octo-
ber 3, 1975 be marked as Exhibit 13 in evidence.

(Plaintiffs' Exhibit 13 received in

evidence.)

MR. SHELTON: I ask that the document dated
January 26, 1976 be marked as Exhibit 14 in evidence.

(Plaintiffs' Exhibit 14 received in

evidence.)

Q To your knowledge, Mr. Baumann, has the union
ever discriminated against its women employees?

A Never in my experience. I have been associated
with the union since 1952. We never discriminated against
our members on any basis.

Q Did you always try to get the best deal you
could for your women employees?

A We have.

Q This agreement which provides the 60 million
dollars benefits over the life of it. Is this the one
submitted to the Court for approval?

A It was.

Q That was the one you negotiated with the Shea,

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Baumann-direct

2 Gould firm?

3 A It was.

4 Q And that in effect has been approved by the
5 Court?

6 A It has.

7 MR. SHELTON: Your Honor, I understand you have
8 entered a judgment in this action in which we have been
9 disqualified, and I would like that judgment to be
10 deemed marked in evidence.

11 THE COURT: Yes, of course.

12 (Plaintiffs' Exhibit 15 deemed received in
13 evidence.)

xx

14 THE COURT: It is a part of the record, but if
15 you want to mark it as an exhibit --

16 MR. SHELTON: I ask that it be deemed marked
17 in evidence so we can refer to it more quickly.

18 Your Honor, may I speak with my partners for
19 just a moment?

20 THE COURT: Yes.

21 MR. SHELTON: Thank you.

22 (Pause.)

23 MR. SHELTON: I have no more questions of
24 Mr. Baumann. Does anybody want to cross examine him? Can
25 we find that out first. If they do, I have a request

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B R U C E A. H E C K E R, being first duly
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHELTON:

Q Mr. Hecker, you are a member of the Shea, Gould
firm?

A I am.

Q How long have you been a member of that firm?

A July of 1956.

Q Wyhen were you admitted to the Bar?

A December 1947.

Q Did the executives of Local 32 J consult the Shea,
Gould firm about equal pay?

A They did.

Q When did that happen, sir?

A The latter part of 1973 as best as I now can
recall.

Q What did the firm advise them to do?

A The firm advised them that the best course of
action to follow was to bring actions for individual
members of the union under the equal pay act to recover
equal pay.

Q Was the reason for that suggestion, one of the
reasons that a complaint that would be commenced before

1 bsrif

Hecker-direct

2 the EEOC would take a substantial length of time?

3 A Yes.

4 Q Was there any other reason?

5 A In our view, it would be the most expeditious
6 way in which to accomplish the objective, which was to get
7 money for the union members.

8 Q Did the Shea Gould firm consider whether it was
9 a conflict of interest for us to represent the union and
10 the individual members?

11 A It did.

12 Q Did it come to a conclusion?

13 A It did.

14 Q What was that conclusion?

15 A That there was no possibility of conflict.

16 MR. SHELTON: Your witness.

17 THE COURT: I don't know that anybody has any
18 questions to ask you, Mr. Hecker. Thank you very much.

19 (Witness excused.)

20 THE COURT: Mr. Shelton --

21 MR. SHELTON: I would suggest, your Honor,
22 that we adjourn at this point in time if it is all right
23 with your Honor.

24 THE COURT: I welcome the suggestion. We will
25 resume Monday morning.

1 bsrif

2 MR. SHELTON: Your Honor, I think that I have
3 a problem about resuming Monday morning, and I would like
4 to have a date toward the end of the week, if it would
5 be at all possible. I have some commitments and if it is
6 at all possible I would like to do it on Friday.

7 THE COURT: Yes, of course, Mr. Shelton. I think
8 the people -- you, of course, are acting for the people
9 who are most concerned about this, and I would like
10 to suit your convenience. If you would rather do it
11 later in the week that is all right with me.

12 MR. SHELTON: I would like to do it on Friday,
13 your Honor.

14 THE COURT: Off the record.

15 (Discussion off the record.

16 THE COURT: Apparently my schedule is such that
17 I can't do it Thursday, but I can do it Friday morning.
18 Does that suit everybody? All right, 10:15 Friday
19 morning.

20 (Adjourned at 5:00 p.m.)

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1 (Open Court)

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2 THE COURT: Good afternoon.

3 MR. SHELTON: Good afternoon, Your Honour. Your

4 Honour, I want to thank you for making the time for us.

5 I call Mr. Gates as a witness.

6 S A M U E L E . G A T E S , called as a
7 witness on behalf of plaintiffs, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SHELTON:

11 Q Mr. Gates, you are an attorney?

12 A Yes, sir.

13 Q You are admitted to practice in what states,
14 courts?

15 A Well, The State of California since 1933, The
16 State of New York since 1948, a variety of District Courts,
17 Circuit Courts of Appeal and The Supreme Court.

18 Q You are now a member of what firm, sir?

19 A I am the senior litigating partner in Debevoise
20 Plimpton Lyons & Gates.

21 Q And during the course of your professional career
22 did you become chairman of the grievance committee of The
23 Bar Association of The City of New York?

24 A I did.

25 Q For how long did you serve?

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Gates/Direct

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A Well, I was appointed a member of the committee in 1964. From 1965 through 1967 I was vice-chairman. I was presiding officer of one of the three panels, and from 1967 to 1970 I was chairman of the committee and thereafter three years as a member of the grievance of the committee of The State Bar of New York.

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Q Mr. Gates, did you read the transcript of the hearing that took place before His Honour in this case on March 5th, 1976, at my request?

11

A I did.

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Q On the basis of the testimony elicited at that hearing are you able to express a professional opinion as to whether the Shea Gould firm was involved in any conflict in representing the plaintiffs in this action?

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MISS LORRY: Excuse me, Your Honour. I would object to that question on the grounds that it calls for an opinion on a totally incomplete record. The witnesses that were called on that date were not crossexamined, and, therefore, it would appear to be impossible for the opinions to go to the matter that will be subsequently before Your Honour in toto.

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THE COURT: All right, Miss Lorry. I understand that. Mr. Shelton's question was on the basis of the record of March 5 can he give us a view. The record on March 5

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2 is what it is. It may or may not be incomplete. And
3 if it is incomplete, then his opinion has got to be taken
4 for what it is. So I will allow it.

5 MISS LORRY: I was indicating that I believe
6 that testimony would have no probative value because the
7 record is incomplete.

8 THE COURT: All right. Thank you, but I will
9 allow it. Go ahead.

10 BY MR. SHELTON:

11 Q You may answer, Mr. Gates..

12 A On the basis of the testimony as reflected in
13 the transcript that I read I saw no conflict of interest.

14 MR. SHELTON: Your witness.

15 THE COURT: Mr. Schanzer? Miss Lorry, do you
16 have any questions?

17 MISS LORRY: Yes, Your Honour, I would like to
18 ask a few questions.

19 THE COURT: All right.

20 CROSS EXAMINATION

21 BY MISS LORRY:

22 Q Mr. Gates, have you read any of the papers that
23 have been submitted to either this Court or to The Court
24 of Appeals in the Nurse actions or in the Willis action?

25 A I read the transcript in the Nurse Action.

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Q You mean the March 5th transcript?

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A Yes, ma'm. And I glanced at the papers on appeal in The Second Circuit. There were two, a document I well recall, a memorandum of law prepared by the Shea Gould firm, and I think their moving papers, or their application to The Second Circuit. I didn't pay enough attention really to note how they --

Q I see. Did you read any of the -- did you read the moving --

A I have told you everything that I read.

Q All right. Could you tell me when you first became acquainted with this matter that is now before The Court?

A I was called by Mr. Hecker, I think two weeks ago Tuesday, last Tuesday. About sixteen days ago.

Q Have you previously attended any of the proceedings in this matter?

A No, ma'm.

Q What field of law do you practice in?

A Well, I am a general litigator, generally on the defence side. I have been involved in a great many aviation matters, labour matters, anti-trust, products liability, securities law violations. The normal run of the mill of a lawyer in a large firm in New York City.

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2 Q Could you state for the record your understanding
3 of the alleged conflict of interest at issue in this case?

4 MR. SHELTON: Objection, Your Honour.

5 THE COURT: Overruled.

6 A I was not asked that question, nor was I told what
7 the alleged conflict was. I was asked to read the trans-
8 cript to see if I found anything in there, in the testimony,
9 that indicated any conflict, and I found nothing.

10 Q I see. That was the testimony of Mr. Bauman on
11 direct and of Mr. Hecker on direct; is that correct?

12 A That is right.

13 MISS LORRY: May I have a moment, Your Honour?

14 THE COURT: Yes, of course.

15 MISS LORRY: Your Honour, I don't think I have
16 any other questions. Thank you.

17 THE COURT: Mr. Schanzer, do you have any ques-
18 tions?

19 MR. SCHANZER: No, Your Honour.

20 THE COURT: Miss Pinzler?

21 MISS PINZLER: No questions, Your Honour.

22 THE COURT: Mr. Gates, thank you very much.

23 (Witness excused)

24 THE COURT: I guess I will see you all tomorrow?

25 MR. SHELTON: Yes, Your Honour.

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2 MS. PINZLER: Yes.

3 THE COURT: All right.

4 MR. SHELTON: Before we do that, may I call
5 another witness, your Honor, who is here and who has some
6 time problems.

7 THE COURT: Well, we all have time problems.
8 How do you feel about that?

9 MS. PINZLER: We have no objection to that as
10 long as we get an opportunity to ask Mr. Baumann a few
11 questions.

12 THE COURT: All right.

13 All right, Mr. Shelton.

14 MR. SHELTON: Joseph R. Crowley.

xx 15 J O S E P H R. C R O W L E Y, called as a
16 witness by the plaintiffs, having been first duly
17 sworn by the Clerk of the Court, testified as
18 follows:

xx 19 DIRECT EXAMINATION

20 BY MR. SHELTON:

21 Q Mr. Crowley, you are an attorney admitted to
22 practice in the State of New York?

23 A I am, sir.

24 Q And how long have you been admitted, sir?

25 A 1949, sir.

1 jke Crowley - direct

2 Q And tell me, what is your present employment,
3 sir?

4 A I'm a full time member of the Faculty of Law
5 at Fordham University.

6 Q What subjects do you teach?

7 A Primary subject, Labor. I also teach Law
8 Labor, Collective Bargaining, Public Employment Law, and
9 Remedies.

10 Q How long have you been a professor at Fordham?

11 A September 1957.

12 Q Have you done anything else in the labor field?

13 A Yes, sir.

14 1957 I was appointed by Governor Harriman to be
15 a member of the Committee on Improper Practices in the
16 Labor Management Field.

17 In 1967 I was appointed by Governor Rockefeller
18 to become a member of the Public Employment Relations Board
19 of the State of New York.

20 And in 1969 was reappointed by Governor Rocke-
21 feller to that same position. And I am a consultant, labor,
22 to the United States Department of Labor.

23 Q Have you written articles and law reviews on
24 labor?

25 A I have, sir.

1 jke Crowley - direct

2 Q And other publications also?

3 A Yes.

4 Q As a matter of fact, isn't it accurate that at
5 one point of time you were employed as a law clerk in this
6 Court?

7 A Yes, I was a law clerk to the late Judge Gregory
8 Noonan.

9 Q Is it accurate to state that --

10 THE COURT: Was it then a one-year or two-year
11 appointment?

12 THE WITNESS: Well, I was there approximately
13 three years, your Honor, because we had the Ferguson-Ford
14 case, which was a lengthy antitrust case and I stayed on with
15 the Court for that.

16 Q You are a trustee in Interstate Stores at the
17 present time?

18 A I am, sir.

19 Q That is a Chapter X proceeding?

20 A Yes, sir.

21 Q Reorganization under the Bankruptcy Act,
22 appointed by Judge Cannella?

23 A Yes, sir.

24 Q My firm represents you in that case, isn't that
25 correct?

1 jke

Crowley - direct

2 A Yes, sir.

3 Q I asked you to read the transcript of the
4 testimony that was adduced on March 5th, 1976 in this
5 matter.

6 A Yes, sir.

7 Q And you have done so?

8 A Yes, sir.

9 Q Tell me, in the light of your professional
10 experience, especially in connection with labor matters,
11 are you in a position to express an opinion as to whether
12 or not a suit by members of the union against the Union
13 itself would have any effect on the Union's ability to
14 represent its members in collective bargaining negotiation?

15 A I can respond on this fashion, that with
16 respect to the dynamics of negotiation, it is not simply
17 the pressures, the confrontation, conflict going from the
18 management side of the table to the Union's and back; there
19 is on both sides of the table, particularly on the Union
20 side, there will be, naturally, differences of opinion among
21 the Union because of the questions of priorities that varying
22 factions in a labor organization have. And I would say
23 this that if, on management side, that they can see some
24 division, say, between the rank and file group and the
25 leadership of the Union, that is part of the negotiating

jke Crowley - direct

process, the management would seek to take advantage of that division.

Q And, in effect, the soldart of the Union's position would be diminished?

A It would, sir.

MR. SHELTON: Your witness.

CROSS EXAMINATION

BY MS. LOWY:

Q Mr. Crowley, just for clarification, you testified on the basis of the March 5th transcript, is that correct?

MR. SHELTON: Your Honor, there is no testimony on the basis of anything.

The question I put to this witness --

THE COURT: Mr. Shelton, I think the question is a proper one.

A I have read the transcript of March 5th. The question or the question that I responded to was not directly related to the testimony of March 5th.

Q I see.

In other words, it was your view on certain problems that are encountered in collective bargaining?

A Precisely. It was not directed -- the response was not directed to the testimony set forth in the March 5th

1 jke

Crowley - cross

2 hearing.

3 Q I see.

4 Thank you.

5 Have you read any of the papers that have been
6 submitted in this matter?

7 A No, I have not.

8 MS. LOWY: Thank you very much, Mr. Crowley.

9 THE COURT: Mr. Crowley, thank you very much.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: I think, Mr. Shelton, can we have
13 your witness back?

14 MR. SHELTON: If you want Mr. Baumann, he's
15 here.

16 THE COURT: Yes.

17 THE CLERK: You are still under oath, Mr. Bau-
18 mann. You understand that?

19 THE WITNESS: Yes.

20 J. O S E P H J. B A U M A N N, resumed.

21 MR. SHELTON: Your Honor, may I make a statement
22 before this cross examination commences?

23 THE COURT: Yes.

24 MR. SHELTON: I just want my position to be very
25 clear on this record, your Honor.



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Baumann - cross

2 going to be explored in any depth by us at this time.

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3 CROSS EXAMINATION

4 BY MS. PINZLER:

5 Q Mr. Baumann, when you testified on direct, I
6 believe you mentioned that you had been associated with
7 Local 32J since 1953, is that correct?

8 A 1952.

9 Q 1952, excuse me.

10 In what capacity were you with them?

11 A Well, from 1952 up until my election as Vice
12 President in 1970, I was employed as assistant to the
13 President.

14 Q In that capacity, Mr. Baumann, did you partici-
15 pate in any collective bargaining negotiations prior to your
16 election as Vice President of the Union?

17 A Yes.

18 Q In what capacity did you participate?

19 A Well, fundamentally and basically in the capa-
20 city of a record keeper and note taker, and as an imple-
21 menter of the settlement of the agreement.

22 In other words, after the agreement was settled,
23 then it was my duty to implement the agreement, to see that
24 the employees complied with it.

25 MS. PINZLER: I would like to have these

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Baumann - cross

2 THE COURT: They are received.

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3 (Court's Exhibits E, F, G, H and I received in
4 Evidence.)

5 THE COURT: Perhaps, Miss Pinzler, you can tell
6 us what you think is the relevance of these, what is it now,
7 A through I?

8 MS. PINZLER: Right.

9 Mr. Shelton introduced the most recent BSL and
10 RAB agreements, the most recent one or two of them.

11 These are the prior agreements which I think
12 make clear the development of how these negotiations have
13 gone and what the past practices were in comparison to the
14 present practices and the more recent practices which have
15 been brought out on direct.

16 And I think it would be instructive to see the
17 changes that have come and when they came in these agreement

18 THE COURT: All right.

19 Q I believe you testified that when Local 32J
20 negotiated with the BSL in 1974, that the BSL agreed that
21 it would provide equal pay if RAB would agree to it, is that
22 correct?

23 A Yes.

24 Q Was this the first time they agreed to equal
25 pay?

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Baumann- cross

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A Yes.

Q I show you a copy of Plaintiff's Exhibit 5 and I would like you to point out the clause that agrees to equal pay?

A Under Article 16, paragraph 1C, it provides that effective May 1, 1975, all Maintenance Cleaners I shall receive the same hourly wage increase negotiated by the Union with the Realty Advisory Board on Labor Relations, Incorporated for the year beginning January 1, 1975, and all Maintenance Cleaners II shall receive the same hourly wage increase negotiated by Local 32B, SEIV, AFL-CIO with the RAB for the year beginning January 1, 1975.

Now, this means that the Maintenance Cleaners I would receive equal pay because when we negotiated this agreement, we were at that point embarking upon our progress to file lawsuits against the individual landlords and building managers, in which we were seeking equal pay, and so that if we were to achieve equal pay through those lawsuits or through the settlement of our upcoming RAB agreement, the effect of this provision would mean that the employers on these jobs would have to, as of May 1, 1975, provide equal pay for the female cleaners because they would have to give the same hourly wage increase that the female cleaners would have gotten under the RAB agreement.

1 jke

Baumann - cross

2 Q Isn't there almost an identical clause in the
3 earlier BSL agreements, which in effect, the BSL members
4 agreed to whatever increase the RAB negotiates?

5 A Yes.

6 Q So that in prior years if the RAB had agreed to
7 equal pay the BSL would have paid it also?

8 A That's correct.

9 Q Did Local 32J ever bargain for equal pay with the
10 RAB before 1974?

11 A Well, even prior to 1974, since my association
12 with the Union, it's always been our position, in our nego-
13 tiations with the Realty Advisory Board that the cleaning
14 women, members of 32J, were equally important to the opera-
15 tion of the building as were the 32B male porters and we have
16 always in our negotiations sought that they received the
17 same rate of pay.

18 We were never able to accomplish that primarily
19 for two reasons, because we could not financially sustain
20 a city-wide strike, which would have been necessary to bring
21 that result about, and number two, because unfortunately
22 landlords and tenants can do without cleaning services for
23 some length of time, we are not in the key position as would
24 be an electrician or a carpenter or a plumber where the
25 cessation of his duties would result in chaos within a day,

6 We have always felt that our female members were
7 entitled to the same rate of pay as the male 32B porters,
8 but for economic and strategic reasons we were never strong
9 enough to achieve it.

12 A Well, in our demands with the RAB, we always asked
13 for what we thought was a sufficient wage increase to bring
14 our people in line with the 32B rates of pay.

17 A Yes.

19 A Well, we didn't use the term equal pay as such,
20 but we always requested wage increases which in our opinion
21 would bring our wages in line with 32B.

25 A No. In prior years, the differential was much

1 jke Baumann - cross 113

2 more than 50 cents.

3 Q How much more?

4 A Well, going back to 1950 --

5 THE COURT: Well, there was a differential.

6 Q There was a differential?

7 A Yes. We have been able to reduce the differen-
8 tial, even prior to --

9 Q By how much?

10 A Well, we reduced it from what it was previously
11 down to 50 cents an hour prior to our present agreement with
12 the RAB, in which we eliminated the differential.

13 Q I'm trying to get an idea.

14 In other words, was it a dollar difference, was
15 it a 75 cent difference or --

16 A I can't. All I can tell you, it was in excess

17 50 cents. Whether it was 75 cents or 80 cents or 85
18 cents, I can't tell you exactly, but I know the differen-
19 tial was greater because in the earlier years when I was
20 first with the organization, we were never able to achieve
21 even the same rate increase as the 32B porters. And only in
22 1966 were we able to achieve the same rate increase, but that
23 still left us with approximately a 50 cent an hour differen-
24 tial.

25 Q Did you ever demand of the RAB that it give you,

1 jke Baumann - cross

2 give local 32J equal pay with Local 32B?

3 A I think I answered that question.

4 As such we never requested equal pay.

5 Q You testified that after you negotiated the job
6 descriptions for Maintenance Cleaner I and Maintenance
7 Cleaner II that you received complaints from women that
8 they were being forced to do some jobs under the category of
9 Maintenance Cleaner II, is that correct?

10 A That's correct.

11 Q Did the Union process any grievances about this?

12 A No. When we first received those -- well, I
13 first assumed office as President and Business Manager of
14 Local 32J in June of 1973, and prior to that time we had
15 negotiated the Maintenance Cleaner I and Maintenance Cleaner
16 II category in the League agreement, and upon my assuming
17 office, I ascertained that the employees were not living
18 up to this Maintenance Cleaner I and Maintenance Cleaner II
19 differentiation which was light cleaning on one side and
20 heavy cleaning on the other, and there upon we made a demand
21 upon the employers to reduce to specifics the duties of
22 each of those classifications.

23 And we entered into negotiations with the
24 employers on that issue, I, personally, on or about June
25 12 of 1973.

1 jke

Baumann - cross

2 Q I believe you testified that even after that
3 you continued to receive some complaints, is that correct?

4 A Even after we had the Maintenance Cleaner I and
5 Maintenance Cleaner II duties spelled out specifically in
6 the agreement, we still continued to receive complaints.

7 Q Did you process any grievances at that time?

8 A At that time we determined that the most expedient
9 way in which we could achieve justice for our people
10 and eliminate that problem would be by seeking equal pay for
11 all our female members under the statute.

12 MS. PINZLER: One moment, please.

13 (Pause.)

14 Q Mr. Baumann, you testified, and several exhibits
15 have been received of notices to your members, concerning
16 the settlement of the lawsuit which were printed in five
17 languages.

18 Were the original consents to sue in five
19 languages also?

20 A I'm not sure what you mean by the original
21 consents to sue.

22 Could you be more specific as to what document
23 you are referring to?

24 A I believe it was marked as an exhibit.

25 THE COURT: Yes, I believe so also. Perhaps,

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Baumann - cross

Mr. Shelton, you can help Miss Pinzler on this.

MR. SHELTON: I think you will find it as my Exhibit 4, your Honor.

Q This consent form.

A Could you repeat the question again.

Q Was that also printed in five languages?

A It is not.

MR. SHELTON: Your Honor might want to know -- your Honor, I just want to remind you, these had to be filed in Court. We have to have the English language when you file something in Court.

Q In addition to the English -- how many female members of Local 32 --

THE COURT: I'm not clear on this.

Can I see Exhibit 4, please?

MR. SHELTON: Sure, your Honor. Exhibit 4?

THE COURT: Yes, the one that was just referred to the witness.

MR. SHELTON: Yes.

Your Honor will recall the original of these were filed in Court with the complaints, and I take it that counsel is trying to get something out of the fact that they were not printed in English and Spanish --

THE COURT: I don't know what counsel is trying

jke

Baumann - cross

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to get at, Mr. Shelton. I would just like to know this:

Mr. Baumann, when this form was sent to whoever it was sent to, was it sent only in English or was it also sent in the other four languages which I gather you use for the normal distribution of papers?

THE WITNESS: No, this form is only sent in English, your Honor.

THE COURT: All right.

MR. SHELTON: Your Honor, I'm not sure that the Union uses five languages for its normal distribution. Your Honor made that statement. I don't think that is correct.

THE COURT: Perhaps my statement is incorrect. I think I have been advised that, at least on occasion, the Union sends out things in five different languages, is that correct?

THE WITNESS: When we sent to our members the settlement, the summary of the settlement agreement, which was in October 1974, it was in five languages, and the modification of that agreement, which was finally concluded with the Labor Department, which resulted in our finalizing our agreement with the RAB in December of 1975, the modifications were sent out in January 1976 to all our members in five languages.

Also the releases which we solicited from our members following the settlement of the first agreement was also -- the releases themselves were also in five languages.

Q How many of the female members of Local 32J signed these consents to sue?

A Approximately 6660, I believe.

Q Out of a total of approximately how many women members do you have again?

A Well, we have total female membership of approximately 11,500.

Q Do you mean how many Allied female employees signed the consents to sue?

A Right offhand, I don't know.

Q If I were to tell you it was approximately 650 does that sound right?

MR. SHELTON: Objection, your Honor. The witness has said he doesn't know.

THE COURT: Sustained.

MR. SHELTON: May I understand the reason for this inquiry? I really don't understand the relevance of it.

MS. PINZLER: Your Honor, I believe that the thrust of Mr. Shelton's argument and Mr. Baumann's testimony on direct was that there was an identity of interests

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Baumann - cross

1 interest between its members and the Union, and that it
2 becomes impossible for one law firm to represent both those
3 interests.
4

5 THE COURT: I asked you two questions.

6 One, what was the relevance of those documents,
7 and two, what is the relevance of this line of questioning?

8 Have you answered both questions?

9 MS. PINZLER: What I just said was on the ques-
10 tion of the documents. I believe on the question of this
11 line of questioning, it is to show a divergence between the
12 interest of the Union and the interest of its members.

13 THE COURT: All right.

14 I'm not sure where we are. Is there a pending
15 question?

16 MS. PINZLER: I don't know. I will put one.

17 THE COURT: All right.



1 jke

Baumann - cross

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2 Q Normal meetings.

3 A Well, the normal meetings, we have an attendance
4 of approximately 600 members.

5 Q And contract ratification meetings?

6 A Well, at the contract ratification meeting on
7 the RAB agreement we had in excess of 2,000 members.8 Q Last week, when Mr. Shelton was questioning you,
9 you read from the minutes of the meeting, general meeting
10 of June 1st, 1974, where you were saying, "Therefore, in
11 order for a member to be a party in the action against
12 her employer and be included in any back pay awarded, it is
13 necessary for the member to sign this consent form."

14 Did you say that at that meeting?

15 A If that's what the minutes reflect, that's
16 what I said.

17 Q Okay.

18 Did persons signing the consent form get a
19 greater share of the settlement money than persons not
20 signing the consent form?21 MR. SHELTON: Objection, your Honor. I'm not
22 sure I understand the relevance of that either. And as I
23 said before, when we started your Honor, this is an adver-
24 sary proceeding.

25 MS. PINZLER: Your Honor, it's my understanding

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Baumann - cross

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that Shea, Gould represents --

THE COURT: I will permit the question.

Do you understand the question?

THE WITNESS: Could I have it repeated, please.

(Question read.)

A The answer is no.

Q Mr. Baumann, in your opinion as President of the Union, should they have?

A Well, when we distributed these consent forms, we were seeking equal pay under the Act, and we were seeking it as far back as we could go under the Act.

At that point I felt that every member of the Union was entitled to the maximum that the Union could achieve as a result of the lawsuits.

Q In other words, you believe that all members of the Union should get the same amount, is that correct?

A Yes.

Q When the membership voted on bringing these lawsuits, were they given a choice of attorneys?

A Yes, at the same meeting, I believe you will find reference to the fact that I had represented to the members that the Shea firm, which had been representing the Union as general counsel since on or about 1959 had always in our opinion done everything in the best interest of the

Union and of its members, and that for that reason we were recommending that the members, in signing the consent form, retain the Shea firm for prosecuting their lawsuits and the members so concurred on that recommendation.

The recommendation was that the members retain the Shea firm to prosecute their lawsuits, and that recommendation was unanimously carried. There was no suggestion to the contrary that any other law firm be retained.

Q No suggestion by you or anyone else?

A No. Because if the members unanimously adopted one recommendation, then it is not my duty or even my function, to suggest to them another suggestion after they have already adopted one.

Q Before they adopted it, though?

A Well, they were free to either concur or not concur in my recommendation. But they concurred in the recommendation.

Q You testified last week that you were advised that there would probably be third-party complaints filed against the Union as a result of these equal pay Act cases, is that correct?

A Yes.

Q When did you first become aware of that potential liability?

1 A Well, on or about -- well at the time that we
2 were consulting with our attorneys as to the most expedi-
3 tious way in which we could achieve equal pay for our female
4 members.
5

6 Q In other words, the Shea, Gould firm advised
7 you of that possibility?

8 A They did.

9 Q And when was that?

10 A Well, that would be around the period of March,
11 April, May, 1974.

12 Q When did you become aware of the probable cause
13 determination in the Willis case?

14 A Could you repeat the question?

15 Q When did you become aware that there had been a
16 probable cause determination by EEOC in the Willis case?

17 A I became aware when we received notice, which I
18 believe was on April -- the determination?

19 Q Right.

20 A The determination I believe was filed on June
21 29, 1973.

22 Q And you became aware of it shortly after that?

23 A Within a few days. I believe we received a
24 letter a few days thereafter.

25 Q Did your attorneys advise you that you had

1 jke Baumann - cross

2 potential liability as a result of that?

3 A I don't actually recall.

4 O You testified last week, Mr. Baumann, that
5 the Union membership approved an assessment for indemnifi-
6 cation of the Union and its officers, should they be held
7 liable as a result of third-party claims.

8 Was that on December 14, 1975?

9 A I don't recall the specific date. Do you have
10 minutes of a meeting on that date?

11 O Yes, I do.

12 MS. PINZLER: Would you excuse me a minute?

13 (Pause.)

14 BY MS. PINZLER:

15 Q I think it is on page 10.

16 A There is no page 10. It only goes to page 8.

17 MR. SHELTON: Maybe you mean December 14, 1974,
18 Ms. Pinzler.

19 MS. PINZLER: I'm sorry.

20 MR. SHELTON: Did you?

21 MS. PINZLER: Yes.

22 MR. SHELTON: Would you like those minutes?

23 MS. PINZLER: Yes. I'm sorry.

24 MR. SHELTON: Can I have these back? Would you
25 like the others?

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MS. PINZLER: Yes. I'm sorry.

MR. SHELTON: Is there a question pending?

O I just want to know if that is the meeting at which it was discussed.

MR. SHELTON: I will concede that it was discussed at that meeting. There may have been other meetings which I don't know about. Is that the question?

MS. PINZLER: Yes.

MR. SHELTON: The minutes really speak for themselves.

Q Was it discussed at any other meetings, or is this the meeting you were referring to in your testimony last week?

A This was the meeting and the action to which I referred in my testimony last Friday.

Q It states there on page 10, "He" referring to you -- "stated that no assessment could be implemented unless in accordance with applicable law."

What law is applicable to this situation?

A Well, the Landrum Griffin Law requires that before the Union can impose an assessment upon its members, that it must give them reasonable notice, which is 15 days, and must give them the opportunity to vote on the proposed assessment by secret ballot.

Q Who advised you what the applicable law was in this situation?

MR. SHELTON: Objection, your Honor.

What difference does this make? I'm really at a loss to understand it.

THE COURT: Overruled.

A The question again, please.

Q Who advised you what the applicable law was to this situation of assessment?

A Well, I have been familiar with that provision of the law because the same provision covers the question of dues increases and we have had dues increases in the years gone by.

Q Who advised you about its use for indemnification?

A Pardon me?

MR. SHELTON: If your Honor please, will your Honor hear me on this objection?

Why doesn't she ask him whether anyone advised him?

THE COURT: I think the witness, Mr. Shelton -- I see no indication that he doesn't know what's going on. I think he can tell us what happened.

However, since Mr. Shelton has made the point,

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2 Mr. Baumann, did anybody ever advise you about this particu-

3 lar matter?

4 THE WITNESS: Well, we were advised by the Shea

5 Gould firm of the probability of a liability -- of a claim

6 against the Union for liability.

7 We were advised by them when we initiated our

8 program of seeking equal pay and filing the lawsuits.

9 Q Did the Shea firm advise you to seek the assess-

10 ment for the purposes of indemnification?

11 A No, they did not.

12 Q Mr. Baumann, have the Union officers been sued

13 before?

14 A We were sued in the instance where we were con-

15 ducting a strike against the Macke Company where we were

16 seeking equal pay, the Union, not the officers, but the

17 Union was sued for a half million dollars by the First

18 National City Bank and by the non-Union contractor, against

19 the Union striking.

20 Q Did you seek indemnification at that time?

21 A We did not because the issue was settled.

22 Q This issue was settled, too, wasn't it?

23 MR. SHELTON: Objection, your Honor.

24 THE COURT: Yes, I think that's an unnecessary

25 comment.

MS. PINZLER: One moment, your Honor.

Q Mr. Baumann, did you discuss your plan to seek the indemnification with Shea, Gould in this case?

A No, we did not.

THE COURT: Was that in this case?

MS. PINZLER: I mean in this instance.

THE COURT: You understand her to mean that?

THE WITNESS: You mean about the equal pay, not the Macke?

Q Right.

Did you consult with them in the Mackey decision?

THE COURT: No, your answer was directed to the case that we are here on today?

THE WITNESS: Yes, and the answer was no.

MS. PINZLER: Your Honor, am I correct in assuming that the third-party claims in the Nurse case are part of the record already?

THE COURT: I believe so, Miss Pinzler.

MS. PINZLER: They were filed in the Nurse case, I assume. If not, perhaps we can mark them as exhibits and I'd also like to --

THE COURT: Frankly, Miss Pinzler, I don't know the answer to your question. I believe they must be a part of the record, and you can refer to them as such, but

1 jke

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2 if you'd like to mark them as exhibits, you may go ahead
3 and do so.

4 MS. PINZLER: I don't think --

5 THE COURT: Miss Pinzler, any papers that he's
6 filed in this courthouse must be subject to some -- unless
7 it is subject to some special ruling -- is something of
8 which I can take judicial notice. It's part of the record
9 of the proceedings that go on in this courthouse.

10 If you feel it necessary to mark them as
11 exhibits in this proceeding, of course, you may do so.

12 MS. PINZLER: I will not at this time, your
13 Honor.

14 Would you excuse me for a moment.

15 Q Mr. Baumann, did you discuss asking for this
16 assessment with any other attorneys other than Shea, Gould?

17 A We discussed it with the Halperin firm, who
18 was representing us as third-party defendants.

19 Q Did she advise you to seek the indemnification?

20 MR. SHELTON: Objection, your Honor.

21 THE COURT: Sustained.

22 Q Moving on to the settlement, Mr. Baumann, you
23 testified that the Department of Labor retracted its earlier
24 no objection position, is that correct?

xx 25 (Court's Exhibit J marked for identification.)

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2 Q I show you what's been marked for identifica-
3 tion Court's Exhibit J and ask you to identify it, please.

4 A It's a letter addressed to me as President of
5 Local 32J, dated September 10, 1975, signed by Assistant
6 Secretary of Labor Bernard DeLurie.

7 Q Is this the letter by which you were notified
8 that the Department was withdrawing its earlier position and
9 changing the position?

10 A We were.

11 Q You testified last week, Mr. Baumann, that the
12 two settlements, the original one and the modified one, were
13 the same dollars imply paid at different times, is that
14 correct?

15 A That's correct.

16 Q I would like to call your attention, Mr. Bau-
17 mann, to Plaintiff's Exhibit 12, General Minutes of January
18 17, 1976.

19 Would you read this paragraph out loud, begin-
20 ing with "This agreement." In the middle of the page.

21 A "This agreement referring to the modified
22 agreement, is even better for our members than the original
23 agreement. Under the original agreement a member working
24 30 hours a week in a Class A office building would have
25 received a total increase over the three-year term of the

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2 agreement of \$5,032.20. Under the modification agreement

3 the same member would receive a total increase over the

4 three-year term of the agreement of \$5,265, which means

5 that under the modification agreement the same member will

6 receive \$232.80 more over the term of the agreement. This

7 more than offsets the loss of one clinic day for 1973,

8 which would be equivalent to one day's pay or \$28.84 for a

9 six-hour day."

10 Q In other words, the modification settlement is

11 better for the women, is that correct? Why don't you explain

12 it.

13 A I testified that the modification agreement was

14 the same cost to the employer as was the prior agreement.

15 Under the prior agreement the employer would

16 have had to pay 5 cents an hour into an inequity fund during

17 the term over the three years of the agreement. And during-

18 the reason for that was so that members who did not concur i

19 the agreement could have a vehicle to which to go if they

20 felt they were entitled to immediate equal pay rather than o

21 a graduated scale.

22 Now, that we have achieved immediate equal pay

23 there was no need for the funds and the 5 cents an hour which

24 the employer would have paid into this fund went to our

25 members in wage but to the employer the cost was exactly

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2 the same.

3 Q Is it true that any money left over in the next
4 equity fund was supposed to go into the welfare fund of the
5 Union?

6 A Yes.

7 MS. PINZLER: Would you mark this Court's
8 Exhibit K, please.

9 (Court's Exhibit K marked for identification.)

10 Q Mr. Baumann, I show you what's been marked for
11 identification Court's Exhibit K and ask you to identify it,
12 please.

13 We can clarify things. Does that appear to you
14 to be a copy of the Willis consent decree?

15 A It does.

16 Q I believe last week you stated that you had two
17 objections to the consent decree. Don't let me put words
18 in your mouth. What were they.

19 A Yes. Our two objections to the consent decree
20 were that under the consent decree members of Local 32J,
21 female members of Local 32J employed by Allied would be
22 deprived of benefits that they have enjoyed under that agree-
23 ment for many years, inasmuch as the Willis consent decree
24 took away from them certain benefits which they enjoyed over
25 the years.

2 Q But specifically what were those two benefits?

3 A The two benefits were company-wide seniority
4 and the work of absentees or overtime clause.

5 Q I hand you a copy of this consent decree and ask
6 you if you can point out where those rights are taken away?

7 A I can save you some time if you give me the
8 printed copy.

9 Q Put these side by side.

10 A Well, in the printed form of the consent decree
11 on page 10 --

12 Q What number, what paragraph number is that?

13 A Under the heading "Equal Pay", it's paragraph 6C,
14 and this has to do with the work of absentees clause because
15 it puts the female members on the same basis as the male
16 members and provides that they shall receive the same weekly
17 wage for the same number of hours of work performed and
18 in our agreement it is the practice that where a cleaner is
19 absent from work, that the cleaner on the job be assigned
20 to her duties and receive the pay of the absentee cleaner
21 without having to put in any additional time.

22 So that on the overtime provisions our female
23 members are in a much better position than the 32B porters
24 in the building. This agreement would put them on the same
25 basis with the 32B porters and therefore would take away

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2 that better terms and conditions which they have enjoyed
3 for years.

4 Q Who advised you that that was the interpreta-
5 tion of this clause?

6 MR. SHELDON: Your Honor, may I understand why
7 we are getting into this at this point in time?

8 I really don't.

9 MS. PINZLER: Your Honor, our motion was
10 originally precipitated by --

11 THE COURT: I will permit this question.

12 Overruled.

13 A Nobody advised me. I can read, I think, English
14 and that's what it means to me.

15 Q Is it also possible to interpret this clause
16 that women working 37 and a half hours --

17 THE COURT: Now --

18 MS. PINZLER: I withdraw it, I withdraw it.

19 Q You mentioned the seniority problem.

20 A Yes.

21 It's under the heading "Equal Access," paragraph
22 10 -- pardon me, 11B as reference to length of employment.

23 Q Is that under the general clause which talks
24 about transferring to 32B jobs?

25 A Well, it's under that heading, yes.

Q Isn't it part of that paragraph?

A Well, the part of that paragraph that we objected to was the total length of employment for the purposes hereof, which have to do with vacation, sickness benefits and so forth, should be determined for females in the same manner as length of service to be determined for males. And as I testified, in our agreement with the contractors the majority -- by whom the majority of our members are employed, our seniority provisions are better than those of 32B inasmuch as our seniority provisions are based on company service rather than individual building service as the 32B contract is so based, so under this provision our female members could lose their company-wide seniority and upon transfer to another building start as new employees.

Q Did you read paragraph 7 of the consent decree?

A It says no provision of this decree should be construed so as to decrease any employee's wages, benefits or other form of compensation.

Q Were you aware at the time you were voicing these objections that Allied already signed the industry agreement?

A No. Was I aware they had signed the industry agreement?

Q Yes.

1 lze

Baumann - cross

2 A Yes, we were.

3 Q As a matter of fact, isn't that industry agree-
4 ment also a collective bargaining agreement?

5 A It is.

6 Q Didn't that bind them to the seniority clause--

7 MR. SHELDON: Your Honor, are we arguing --

8 MS. PINZLER: I withdraw it.

9 Q Did you or other Union officials or your
10 attorneys have a meeting set up with Allied's attorneys for
11 the morning of Tuesday December 17 to discuss your objec-
12 tions to the Willis consent decree?

13 MR. SHELDON: Objection, your Honor.

14 MS. PINZLER: February, excuse me.

15 THE COURT: What's the question again?

16 MS. PINZLER: I asked Mr. Baumann whether there
17 was a meeting set up with Allied's attorneys to discuss any
18 of these objections.

19 THE COURT: For what date?

20 MS. PINZLER: February 17, your Honor, which was
21 the morning before the afternoon that we were in here.

22 THE COURT: What's the point of this?

23 MS. PINZLER: Your Honor, I want to establish
24 that -- well --

25 THE COURT: All you are asking at the moment is

was there a meeting set up, is that what you are asking?

MS. PINZLER: Right.

THE COURT: Was there a meeting set up?

I just want to know whether there was a meeting set up.

THE WITNESS: Yes, there was.

THE COURT: Did you go to that meeting?

THE WITNESS: No, I wasn't able to attend it.

Q Did any other Union official attend?

MR. SHELTON: Objection.

THE COURT: I really don't know what this is going to tell us. I assume, I have been told there was a meeting and I assume there was somebody there from the Union.

Where are we going?

MS. PINZLER: I want to establish whether such a meeting was held, for an opportunity to clarify points in our agreement prior to coming before this Court.

Q Was the meeting ever held?

MR. SHELTON: Objection.

THE COURT: No, go ahead.

A To my knowledge, I don't know. I wasn't there.

0 Just a few more questions.

You mentioned that the Union did not participate

1 lze Baumann - cross

2 in the EEOC -- you did not participate before the EEOC
3 prior to its determination of probable cause, is that
4 correct?

5 A That's correct.

6 Q Did you participate afterwards, did the Union
7 participate afterwards?

8 A Well, I can't recall the exact date but I know
9 that the attorney from the Shea firm who was representing us
10 on a day-to-day basis, endeavored to have some mediation
11 sessions with the EEOC as the letter invited us to do.

12 I was not present at the sessions but I under-
13 stand from the attorneys that they were never given an
14 opportunity by EEOC to enter into any mediation efforts to
15 resolve this.

16 Q But the Union was represented by the Shea firm
17 at those sessions?

18 A It was.

19 MR. SHELTON: I don't know if there was more
20 than one session, your Honor.

21 I wish that could be clarified.

22 THE COURT: Yes, Mr. Baumann, can you tell us?

23 THE WITNESS: As far as I know your Honor, there
24 was only one session in which Mr. Stergios, who was repre-
25 senting us in that matter --

1 lze Baumann - cross 140

2 MR. SHELTON: Mr. Stergios, your Honor, is
3 an associate in my firm.

4 THE WITNESS: That he attended with the EEOC,
5 with whom exactly in the EEOC, I don't know.

6 THE COURT: Before we leave this, Mr. Shelton,
7 you raised a point.

8 I wanted to make sure that we clear it up.
9 Was there another question, while we are interrupting here,
10 was there something else or have you gotten what you wanted
11 out of the witness?

12 MR. SHELTON: Are you finished?

13 THE COURT: No. You interrupted.

14 MR. SHELTON: I think it's clear as far as this
15 witness knows of only one session. That's all. The reason
16 I had put it your Honor was because Mrs. Pinzler, I believe,
17 inadvertently said sessions in the plural and I think she
18 had misspoke.

19 THE COURT: All right.

20 MS. PINZLER: Your Honor, I move the admission
21 of Court's Exhibit K and J.

xx 22 (Court's Exhibit J and K received in evidence.)

23 MS. PINZLER: May I have just a moment, your
24 Honor.

25 (Pause.)

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MS. PINZLER: I have no further questions,
your Honor.

REDIRECT EXAMINATION

BY MR. SHELTON:

Q You were asked some questions on cross examination by Mrs. Pinzler with respect to your recommending the Shea, Gould firm, do you recall that, sir?

A Yes, sir.

Q Did you at any time tell any of your Union members not to hire another attorney?

A No, sir.

Q Did you ever in any way, shape or form, induce them not to commence any lawsuits against whomever they thought they had claims against?

A No.

Q You recall we talked on direct about this agreement that's been marked in evidence, I believe, as Plaintiff's Exhibit 2, which is the agreement with the BSL, do you remember that?

I am sorry, it's Exhibit 1, your Honor, I misspoke.

I just want to know whether or not at the membership meeting which followed the execution of this agreement, whether it was ratified by the membership?

2 A This agreement was ratified by the members on
3 April 8, 1971.

4 Q Were there any dissents?

5 A No dissents. It was unanimously ratified.

6 Q By all the members?

7 A All the members.

8 Q You remember we talked about the RAB agreement,
9 the agreement that was entered into I think in the early
10 part of 1972?

11 A January 1, '72.

12 Q Was that also ratified?

13 A It was.

14 Q By the members?

15 A Right. Unanimously.

16 Q Unanimously.

17 A Yes.

18 THE COURT: When you say ratified, what do
19 you mean, every member voted?

20 THE WITNESS: No, your Honor. Actually after we
21 concluded negotiations with the employer and when we have
22 gotten to the point where we feel we have extracted
23 everything that we possibly could, we will call a meeting to
24 report to the members on the progress of negotiations and we
25 will put to them the proposed settlement agreement.

2 Not all members attend the meeting, but all the
3 members are sent notices of the meeting. If the Union
4 officers and negotiating committee recommend the adoption
5 of the agreement, then the members are given an opportunity
6 at the meeting to either vote for or against the proposed
7 adoption or ratification and the vote is carried on the
8 basis of a majority vote, the majority of those present but
9 in this particular instance, the vote was unanimous.

10 There were no dissenting votes.

11 THE COURT: This particular instance is --

12 MR. SHELTON: This is the agreement on January
13 1st, 1972, with the Building Service League -- I am sorry,
14 with the Realty Advisory Board.

15 THE COURT: Do the minutes of that meeting indi-
16 cate how many people were present?

17 THE WITNESS: Normally we do indicate the number
18 of members present. I don't believe that specific one does.

19 MS. PINZLER: The witness testified there were
20 generally 2,000 members present at --

21 THE WITNESS: I said there were 2,000 members
22 present at the ratification of the present settlement
23 agreement, the 1975 agreement.

24 We are talking about the 1972 agreement.

25 THE COURT: How many people were present?

THE WITNESS: At the 1972? I would guess, your Honor, probably in the neighborhood of about 900 to a thousand.

Q I take it all the members received notice of the meeting?

A Yes. Notice is sent out to all our members involved in that particular contract.

Q You were asked some questions about Plaintiff's Exhibit 4 in evidence, which is the consent to be joined as a party in the equal pay actions that were commenced by the Shea, Gould firm in behalf of the Union's members.

I think someone made the statement, either in a question, it may have been the Court, that these things or these consents were sent to the members and I just want to be accurate about it.

Do you recall whether they were sent or whether they were distributed personally at the buildings where your people worked?

A I recall very definitely. They were not sent. They were distributed by the delegates to our members personally on the job.

Q Do the delegates usually speak the language?

A Yes, we have delegates who speak all the languages of our members. Spanish, Polish, Ukranian,

2 Yugoslavian, French.

3 Q Were they available to answer --

4 THE COURT: You don't have one delegate who
5 speaks all these languages?

6 THE WITNESS: No, sir. We have a Polish-
7 speaking delegate and a few Spanish-speaking delegates.

8 Q If your Union members had any questions, did
9 they have an opportunity to ask the delegates about it?

10 A They did. The delegates were instructed to
11 refer any questions either to the officers of the Union or
12 to counsel to the Union, if any of the members had questions
13 about the signing of the consent form.

14 MR. SHELTON: Your Honor, just a few house-
15 keeping matters.

16 I think we said that we were going to have
17 deemed marked in evidence Exhibit 10 and I now have that.
18 I have given a copy to my adversary so I would like this
19 to be marked physically as Exhibit 10, your Honor.

xx 20 (Plaintiff's Exhibit 10 marked for identifi-
21 cation.)

22 MR. SHELTON: Can we put it in evidence. I
23 don't think there is any objection.

xx 24 (Plaintiff's Exhibit 10 received in evidence.)

25 (Discussion off the record.)

Q Did there come a time, Mr. Baumann, when Mrs. Willis filed an unfair labor practice against the Union before the National Labor Relations Board?

A Yes. It was --

Q I'm going to show you a group of papers and ask you whether or not this is the original charge, the amended charge and the dismissal by the NLRB?

MS. PINZLER: Your Honor, I don't understand the relevance of this.

A It is.

MR. SHELTON: I want your Honor to understand that in the past Mrs. Willis had made charges which apparently have not been sustained. I think that's relevant. I offer these documents in evidence.

I have given copies to counsel.

THE COURT: They are received.

MR. SHELTON: Would you please mark these papers as Exhibit 16.

(Plaintiff's Exhibit 16 received in evidence.)

Q Is it accurate, Mr. Baumann, that Mrs. Willis also filed a complaint against the Union before the State of New York, Executive Department, Division of Human Rights?

A Against the Union and the employer, Allied Maintenance.

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Q Is that correct?

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A It is.

4

Q Was that charge dismissed?

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A It was.

6

Q Is this the determination?

7

A It is.

8

MR. SHELTON: I offer it in evidence, your

9

Honor, as the next exhibit.

10

Counsel has a copy.

11

THE COURT: It is received.

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(Plaintiff's Exhibit 17 received in evidence.)

13

MR. SHELTON: I have no further questions of

14

Mr. Baumann.

15

THE COURT: May I see this last exhibit.

16

(Exhibit handed up.)

17

THE COURT: All right, Mr. Baumann, I thank you

18

very much.

19

(Witness excused.)

20

MR. SHELTON: May it please --

21

THE COURT: Before we proceed, Mr. Shelton, one

22

of my exhibits, Court's Exhibit K, which I think Miss

23

Pinzler, you are responsible for, it has pages 1 through 9

24

and then it skips to page 12 and then it goes from page 12

25

to page 10 and there is no page 11, but there is a second

1 lze

2 page 12.

3 MR. SHELTON: I think you will have to ask
4 Miss Pinzler about that.

5 THE COURT: Just for the record, would you
6 complete it.

7 MS. PINZLER: If it is all right with your
8 Honor, we will replace these.

9 MR. SHELTON: Your Honor, I would like to offer
10 in evidence at this point, a transcript of the hearing
11 that was held before your Honor on January 27, '76, at 4:45
12 p.m. in the case Willis against Allied.

13 THE COURT: Can you tell me, Mr. Shelton, why
14 you think it is important to put this in the record? It
15 is already in the record, I assume, but why do you want
16 to offer it as an exhibit?

17 MR. SHELTON: Your Honor, that is not in this
18 case.

19 THE COURT: What's the significance of it?

20 MR. SHELTON: I think it's important because
21 it certainly indicates a disposition on our part of explain
22 to your Honor why we felt the Willis settlement had so many
23 problems in it and it reflects what occurred when we endea-
24 vored to make our position known.

25 THE COURT: All right.

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(Plaintiff's Exhibit 18 received in evidence.)

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MR. SHELTON: I have completed the presentation

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of my case, your Honor.

5

THE COURT: All right. Does anybody else wish

6

to offer any further evidence?

7

MS. LOWY: Your Honor, I would like to call one

8

witness very briefly. It won't take more than a few

9

minutes.

10

THE COURT: All right.

xx

11

M A R V I N D I C K E R, called as a witness by the

12

Plaintiff-Intervenor, having been first duly sworn

13

by the Clerk of the Court, testified as follows:

xx

14

DIRECT EXAMINATION

15

BY MS. LOWY:

16

Q Mr. Dicker, with what law firm are you asso-

17

ciated?

18

A I'm a member of the law firm of Proskauer,

19

Rose, Goetz & Mendelsohn.

20

Q Were you subpoenaed to testify here today?

21

A Yes, I was.

22

Q And can you --

23

MR. SHELTON: Can we find out who subpoenaed

24

him, your Honor?

25

MS. LOWY: I subpoenaed him.

1 lze

Dicker - direct

2 MR. SHELTON: I make the same objection, your
3 Honor, I have made in the past.

4 THE COURT: Which objection is this?

5 MR. SHELTON: The objection is if counsel is
6 appearing in an adversary proceeding and not as an amicus
7 curiae, I don't think she has gotten adversary proceeding
8 here because she has withdrawn her motion. That's my posi-
9 tion.

10 THE COURT: I understand your position.

11 MR. SHELTON: I will try not to repeat it
12 again, your Honor.

13 Q Mr. Dicker, what is your association with the
14 Building Cleaning and Maintenance Industry?

15 A My firm acts as general counsel to the Realty
16 Advisory Board on Labor Relations, Inc., a multi-employer
17 association made up of landlords and managing agents in
18 New York City.

19 Q In that capacity have you participated in the
20 negotiation of any collective bargaining agreements in this
21 industry?

22 A I have participated in the negotiatiation of
23 collective bargaining agreements in this industry since
24 1963.

25 Q With regard to which Unions?

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A With regard to the Local 32B, with regard to Local 32J, and with regard to several other craft unions in the industry.

MS. LOWY: I would like to have these marked as Court's Exhibit. I don't know what number we are up to. L, M, N, O and P.

I am sorry, we don't have these copies with us. I will get you copies this afternoon, Mr. Shelton.

xx (Court Exhibits L, M, N, O, P received in evidence.)

Q I show you what's been marked as Court Exhibit L and ask you to identify it.

A This is the 1963 Commercial Building Agreement between the Realty Advisory Board and Local 32B. It expired on December 31, 1965.

Q I show you what has been marked as Court Exhibit N and ask you to identify it.

MR. SHELTON: May it please the Court, is the Court receiving these as exhibits?

THE COURT: Yes.

MR. SHELTON: May I find out why the agreements between Local 32B and the Realty Advisory Board are relevant? This is not a 32J agreement.

MS. LOWY: Your Honor, the local 32B is a Union

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2 which represents practically dominantly males in building
3 cleaning industry in New York City and we believe that
4 for the Court to have a full picture of this issue, it is
5 necessary for the Court to see the agreements that apply
6 both to the women as well as to the men in the industry and
7 for that purpose we think that they should be before your
8 Court, before the Court for its consideration.

9 THE COURT: All right, they were received.

10 MR. SHELTON: Would your Honor hear me on
11 this?

12 THE COURT: Of course, Mr. Shelton. Do you
13 want to be heard right now or can we go ahead with Mr.
14 Dicker and come back to you.

15 MR. SHELTON: If you would like me to come back
16 and reserve decision on it, that's fine with me, your Honor.

17 THE COURT: All right.

18 A Exhibit N is the 1966 Commercial Building
19 Agreement between the RAB and Local 32B, effective January
20 1, 1966. Expired December 31, 1968.

21 Q I show you what's been marked as Court Exhibit N
22 and ask you to identify it.

23 A Exhibit N is a 1969 Commercial Agreement between
24 the RAB and Local 32B for the period January 1, '69 through
25 December 31, 1971.

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2 Q I show you what's been marked Court's Exhibit
3 O and ask you to identify that.

4 A Court's Exhibit O is the 1972 Commercial Agree-
5 ment between the RAB and Local 32B, for the period January
6 1, '72 through December 31, '74.

7 Q And Court's Exhibit P, would you identify it?

8 A Court's Exhibit P is the current collective
9 bargaining agreement, 1975 agreement between the RAB and
10 Local 32B which expires on December 31, 1977.

11 MS. PINZLER: I move the admission --

12 THE COURT: Yes, they were received. They are
13 received subject to my hearing further from Mr. Shelton.

14 Q Mr. Dicker, you just testified that you have
15 participated in negotiating collecting bargaining agreements
16 with both Local 32B and 32J.

17 Did you participate in negotiating the most
18 recent collective bargaining agreement with Local 32J?

19 A Yes, I did.

20 Q Was this most recent collective bargaining
21 agreement with Local 32J also designed to be a settlement
22 of any lawsuits?

23 A The negotiations for the 1975, 32B -- excuse me,
24 for the 1975 Local 32J RAB agreement were conducted simul-
25 taneously with the negotiations for the settlement of approx

1 lze

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2 mately 70 some odd equal pay lawsuits brought against
3 various members of the Realty Advisory Board.

4 Q How did it come about that the settlement of the
5 lawsuits was combined with the collective bargaining pro-
6 cess?

7 A The lawsuits which were begun in I think June
8 and July of 1974, created a potentially large financial
9 liability for the entire real estate industry. As a result
10 when the negotiations for the new agreement commenced in
11 late November of 1974, it was the position of the employers
12 that unless we could determine the financial liability if any,
13 under the lawsuits, we could not enter into a new collective
14 bargaining agreement with Local 32J.

15 Q Who was it, then, who wanted to combine the
16 negotiation of the collective bargaining agreement with the
17 settlement of the lawsuits?

18 A Initially --

19 MR. SHELTON: I think the witness answered that
20 question.

21 THE COURT: No. You can answer.

22 A Initially it was the position of the Realty
23 Advisory Board that negotiations for the settlement of
24 both matters be simultaneous.

25 Q Who represented the interests of Local 32J in the

1 lze Dicker - direct

2 meetings involving the settlement of the equal pay lawsuits
3 and the collective bargaining agreements?

4 A Local 32J was represented during all those meet-
5 ings which related solely to the collective bargaining
6 agreement and the equal pay lawsuits by Mr. Finneran, Mr.
7 Stergios and other representatives of Shea, Gould firm.

8 Q Who represented the interests of the Equal Pay
9 Act plaintiffs at those same meetings?

10 A The interests of the Equal Pay Act plaintiffs
11 were represented by the same law firm.

12 Q Did attorneys from the Halperin, Shevitz firm
13 ever represent the interests of Local 32J in the collective
14 Bargaining sessions and the settlement of the equal pay
15 cases?

16 A Not in the collective bargaining settlements
17 nor in the settlement of the equal pay cases.

18 Q Now, could you explain the historical differences,
19 if any, between 32B and 32J wage rates in this industry?

20 MR. SHELTON: Objection, your Honor.

21 THE COURT: Mr. Dicker, do you think you are
22 qualified to answer that question?

23 THE WITNESS: I can explain what happened from
24 1963 to date.

25 THE COURT: On the basis of what?

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THE WITNESS: On the basis of my participation in the negotiations.

THE COURT: All right, I'll allow the question.

A The pattern of the contracts for 1963 and '66 were identical in that in each of those negotiations, which were in the months immediately prior to the effective date of the contracts, the RAB concluded negotiations with Local 32B initially and only after the negotiations with Local 32B were concluded did negotiations with Local 32J begin.

In those two contracts, the 1963 and 1966 contract, it was already a wage differential between 32B employees and those represented by 32J. The exact amount I don't know and in each of those contracts the 32J received a settlement which was the same percentage increase as that received by Local 32B. It was less in cents per hour but it was an identical percentage increase.

Q Which left them, in other words, at the same differential that they had previously?

A No, the differential was slightly increased in both 1963 and 1966, I think by only half a cent or a cent an hour.

At least in the RAB contracts, that was what happened.

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2 In 1969 and in 1972 agreements were also of a
3 similar pattern, that is, that Local 32B negotiations with
4 the RAB concluded first. Then we started negotiations with
5 Local 32J. In each of those years the wage increase granted
6 to Local 32J was identical in cents per hour to that granted
7 to Local 32B.

8 Q In sum, what did this do to the differential
9 over the period of years that you are speaking about?

10 MR. SHELTON: Objection, your Honor.

11 THE COURT: Do you object to the form?

12 MR. SHELTON: Yes, your Honor.

13 THE COURT: Overruled.

14 A The differential which existed at the conclusion
15 of the 1966 contract was maintained. The differential
16 between 1963 and 1969, that six years, there was a slight
17 increase in the differential.

18 THE COURT: I am not sure I understand the
19 answer.

20 Mr. Reporter, can you read back the question
21 and the answer.

22 (Record read.)

23 THE COURT: As I understand your answer, you
24 are saying that in 1966 there was a differential which
25 was maintained and then in the next sentence you say from

2 '63 to '69 it was increased.

3 THE WITNESS: Your Honor, in the 1963 and 1966
4 negotiations, the differential was increased slightly. After
5 1969 the differential maintained constant until the current
6 collective bargaining agreement.

7 Q Can you give us an approximate amount as to
8 what that differential was, not precise, just approximate?

9 A It ranged somewhere between 46 cents and 50
10 cents an hour.

11 Q I assume with Local 32B receiving a greater
12 amount per hour?

13 A Yes.

14 Q Than 32J?

15 A Yes.

16 Q I wonder if you would now explain the relation-
17 ship between the RAB negotiations and the BFL negotiations
18 since both of those negotiations affect the same industry.

19 MR. SHELTON: I'm not sure this witness is
20 competent to tell us what one has about the other. He didn't
21 participate in the other ones at all.

22 THE COURT: I think he is competent, at least --
23 I will be interested to hear what he has to say.

24 Overruled. Go ahead, Mr. Dicker.

25 A The BSL contract -- the Building Service League

1 is an association between contractors for the most part,
2 work in buildings that are members of the Realty Advisory
3 Board.
4

5 It is the cleaning contractors that employe
6 the overwhelming majority of employees in the industry but
7 it is the building owners who eventually pay the cleaning
8 contractors for the services performed. The Building
9 Service League contract, at least since 1963, the Building
10 Service League's contracts were always one year ahead of
11 the RAB's contracts, they negotiated a year before the
12 RAB did and since 1963 the pattern has been the same, that
13 is, Building Service League's first year in wage increases
14 was roughly identical to what was the last year of the RAB
15 contract.

16 The Building Service League's contracts again
17 since 1963 always provided in the second and third years for
18 a wage increase which was roughly identical -- excuse me,
19 always provided for a wage increase that incorporated the
20 Realty Advisory Board wage increases negotiated in those two
21 years and in some instances there was a penny or two cents
22 an hour differential also provided for. There is also a
23 provision in the Building Service League contract which
24 affects employees working in RAB buildings which is approxi-
25 mately nine or ten thousand members of the Local 32J and that

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2 provision provides that wage increases negotiated in the
3 RAB contracts -- it provides in effect that wage increases
4 granted in the RAB contracts be paid to employees working
5 in RAB buildings under the Building Service League agree-
6 ment.

7 THE COURT: Can I interrupt for a moment?

8 MS. LOWY: Certainly.

9 (Discussion off the record.)

10 Q Mr. Dicker, if I might simplify what you just
11 said, correct me if I misstate anything, I understood the
12 import of what you said to be that the BSL essentially went
13 along with the terms and conditions of employment negotiated
14 by the RAB and that the RAB agreements were used as a
15 model --

16 A The economic terms and conditions only. There
17 were other terms in the BSL contract but the economic terms
18 and conditions of the RAB contract were adopted by the
19 Building Service League.

20 Q You said that you are familiar with the BSL
21 agreements.

22 To your knowledge, is there anything in the
23 agreements you have referred to, agreements since I believe
24 1963, is there anything in the BSL agreements which provides
25 for the same pay for male workers as for female workers?

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A There is nothing in that agreement that so provides, to my knowledge.

O With regard to the provision which Mr. Baumann testified to last Friday regarding an alleged equal pay provision in the most recent BSL agreement, can you explain your understanding of that section.

For the Court's convenience that appears at page 44 of the transcript if you would like to see it.

MR. SHELTON: Your Honor, is this man being asked to comment on the terms of a contract which is already in evidence?

MS. LOWY: I asked him for his understanding.

MR. SHELTON: I object to it on that basis.

THE COURT: It is --

MS. LOWY: Your Honor, I believe --

THE COURT: It is an unusual question. Why do you think I ought to permit it?

MS. LOWY: Because I believe that there is some confusion from the testimony as to what that section really referred to and I believe that Mr. Dicker's familiarity with this industry might be helpful to the Court in understanding better the testimony adduced last Friday.

THE COURT: May I see the provision?

MS. LOWY: Yes, your Honor. It's on page 44

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2 and it goes over to page 47 or so.

3 THE COURT: Yes, go ahead, Miss Lowy.

4 MS. LOWY: Thank you, your Honor.

5 Q Mr. Dicker.

6 A My understanding of the Building Service League
7 contract provision was that it provided, as did prior
8 Building Service League contracts, that whatever the RAB
9 gives, the Building Service League will give.

10 Q In other words, this was a general provision
11 that was incorporated previously and it did not refer speci-
12 fically to equal pay, is that correct?

13 MR. SHELTON: If your Honor please, I object to
14 the question.

15 Whether it referred to it specifically or not is
16 really immaterial. It is what it says happens when we get
17 the increase that's important.

18 THE COURT: Your objection, Mr. Shelton, is
19 overruled.

20 Q I'm merely restating what --

21 A When I first saw that agreement, which was about
22 a month after it was negotiated by the Building Service
23 League in May of 1974, it did not call my attention to it
24 specifically because it appeared to be the same as prior
25 agreements.

Q I understand.

And how long, to your knowledge, has that same provision appeared in BSL agreements?

A I'm only familiar since 1963. The BSL contract that was then in effect was I think a '62 BSL contract, had a similar provision in it.

Q During that period did male and female workers receive the same pay?

A No.

Q Thank you.

Now, prior to the institution of the Equal Pay Act lawsuits by Shea, Gould, did Local 32J ever negotiate actively for equal pay for male and female workers with the RAB?

A To my recollection, at no time was there a demand by Local 32J for equal pay.

THE COURT: You are telling us about your recollection. Were you in a position to know if such a request or suggestion had been made?

THE WITNESS: Yes, your Honor, I participated since 1963 in all of the Local 32B and 32J negotiations, including the current ones.

I saw their demands, sat across the bargaining table from them and they never asked for equal pay.

1 lze Dicker - direct

2 Q In the cases in which your clients are defendants,
3 those cases alleging liability under either the Equal Pay
4 Act or under Title 7, what position has your firm taken
5 on behalf of your clients in regard to the Union's liability
6 if any?

7 A We filed third-party complaints against Local
8 32J and other labor organizations claiming that the liability
9 was either exclusively that of the Union or at least in
10 part that of the Union.

11 MS. LOWY: I would like the Court to take judi-
12 cial notice of the existence of the third-party complaints
13 in the Nurse action.

14 Q Were any similar allegations made in the Willis
15 action on your part, on behalf of your clients --

16 THE COURT: Of course, I will take judicial
17 notice. I think it would make it easier for all of us if
18 you could give me a piece of paper stating with more
19 specificity the things you want me to take judicial notice
20 of.

21 I don't mean right now.

22 A Similar claims were made in the Willis action
23 on behalf of the Realty Advisory Board.

24 Q And that was in what form?

25 A I think that was a cross claim.

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Dicker - direct

2 MS. LOWY: Your Honor, I would like also for
3 your Honor to take judicial notice of that, of the existence
4 of the cross claims. I will add that to the list.

5 Q Did the issue of the third-party complaints come
6 up in any settlement discussions?

7 A Oh, yes, they did.

8 Q Could you elaborate on that?

9 A When we reached the initial agreement with
10 Local 32J and the Shea firm to settle both the equal pay
11 lawsuits and the collective bargaining agreement, which was
12 in June of 1975, we also agreed that upon the discontinuance
13 of the lawsuits against our clients, that we would dis-
14 continue the third-party complaints against Local 32J.

15 Q And with regard to the discussion of the third-
16 party complaints against Local 32J and the settlement nego-
17 tiations, who represented the interests of Local 32J?

18 A The Shea firm.

19 MR. LOWY: I don't believe I have any further
20 questions.

21 CROSS EXAMINATION

22 BY MR. SHELTON:

23 Q Mr. Dicker, in connection with your negotiations
24 with respect to wage increases when contracts were up, was
25 there ever a demand made by Local 32J for more pay for its

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members than for Local 32B?

A Yes, there was.

Q So that would in effect give the women more pay than the men?

A No.

Q Why not?

A As I recall the demands, the written demands which we received from Local 32J, on several years they had asked for a larger increase than was originally requested or received by Local 32B. But frankly, Mr. Shelton, those demands for wages were never discussed with Local 32J except for the current negotiations.

I don't remember the exact amounts that were demanded by --

Q Whether or not you recall whether or not they were discussed or not, I just want to make one thing clear.

When Local 32J made demands on you for pay increases, were those demands in excess of monies that -- of the demands that had been made on behalf of Local 32 members -- 32B members?

A The cents per hour demand of Local 32J, in some of those years, was higher than the cents per hour demanded by Local 32B. If you are asking whether or not those cents per hour would have eliminated the differential, I'm

1 lze Dicker - cross 167

2 saying that I don't recall precisely what the numbers were.

3 Q But you do remember in any event that the dollar
4 demands were actually higher for the increase, is that
5 correct?

6 A Yes, they were higher.

7 Q And if those demands had been successful, it
8 either would have reduced the differential completely
9 between Local 32B and Local 32J or it would have decreased
10 it, is that correct?

11 A I think it would have decreased it.

12 Q Insofar as the last contract negotiations was
13 concerned, it is a fact, isn't it, that the Local 32J demand
14 was for in excess of what the 32B people were getting
15 originally?

16 A Their demand was higher than the demand submitted
17 by Local 32B, yes.

18 Q I just want to -- well, maybe you will remember.

19 Do you remember what the demands were that were
20 made upon you by Local 32B in the January 1st, 1975 nego-
21 tiating sessions in terms of dollars and cents?

22 A The precise dollars, no, I do not remember the
23 precise dollars.

24 Q Let me call your attention to 4B; let me show
25 you the document.

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Dicker - cross

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2 Listen to me for just a minute.

3 Mr. Dicker, see if this document refreshes your
4 recollection. I call your attention specifically to para-
5 graph 4B. You can either answer yes or no as to whether or
6 not it refreshes your recollection.

7 A I have no independent recollection, even reading
8 this. It appears to be accurate, but I can't say that I
9 can remember it.

10 THE COURT: The answer is no.

11 THE WITNESS: The answer is no.

12 Q It doesn't refresh your recollection at all?

13 Do you know whether this is the copy of the
14 proposals made by Local 32B that were presented to you?

15 A This appears to be an accurate copy.

16 MR. SHELTON: I offer it in evidence.

17 THE COURT: All right, it is received.

18 MS. LOWY: No objection.

xx 19 (Plaintiff's Exhibit 19 received in evidence.)

20 Q Now, I call your attention to paragraph 4B. It
21 states, doesn't it, that "In no event shall any employee
22 be paid a minimum wage of less than 225 per week."

23 A Yes, it does.

24 Q If you divide that by 35 hours you get 6.43 an
25 hour, is that correct?

1 lze

Dicker - cross

2 A Yes. I don't know whether the arithmetic is
3 correct. I assume you have done it correctly.

4 Q Do you want to check it out?

5 A No. I will take your word for it, Mr. Shelton.

6 Q 35 into 225 is 6.43.

7 Do you remember what the wage demand was for
8 Local 32J?

9 A No, I don't.

10 Q Let me show you this document and ask you if it
11 refreshes your recollection, particularly page 2 thereof?

12 A No, it doesn't.

13 Q Let me show you the document and ask you if
14 it is a copy of the proposals made by Local 32J in the last
15 negotiating session?

16 A This is an accurate copy of the proposals made
17 by 32J.

18 MR. SHELTON: I offer it in evidence.

19 THE COURT: All right, it is received.

20 MS. LOWY: Mr. Shelton, these are the 1975
21 demands.

22 MR. SHELTON: That's correct.

23 MS. LOWY: No objection.

24 (Plaintiffs' Exhibit 20 received in evidence.)

25 Q Is it correct that the demands made by Local 32J

were \$6.80 and a half cents an hour?

A Yes.

MR. SHELTON: Thank you.

May I have a few minutes recess, your Honor?

THE COURT: Well --

MR. SHELTON: If your Honor would just give me a few minutes, I will check with my associate and my clients.

THE COURT: All right.

MR. SHELTON: Thank you.

THE COURT: We will take five minutes.

MR. SHELTON: Oh, sure, your Honor, that's quite adequate.

Thank you very much, your Honor.

(Recess.)

BY MR. SHELTON:

Q Mr. Witness, at these negotiating sessions in connection with the 1975 collective bargaining agreements, which settled these lawsuits, were members of the Union present?

A Mr. Baumann and Mr. Mumm were present. I don't think any other members of the Union were present.

Q Were they actively participating in the negotiating sessions?

A They participated.

1 lze

Dicker - cross

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2 Q They were present at all of the sessions, to
3 your recollection?

4 A Mr. Mumm may have missed a session but basically
5 they were present at all.

6 Excuse me. There were a few sessions with
7 counsel only, where they were not present.

8 Q I see.

9 In connection with the equal pay suits, commenced
10 by my firm against your people -- generally we will use
11 that term -- I take it you said that it was your position
12 that you wanted both of them settled together or else there'd
13 be no negotiation, is that correct?

14 A No.

15 Q What was your position?

16 A Our position was that the economic, potential
17 economic impact of lawsuits was so great that we could
18 not negotiate a collective bargaining agreement with any
19 wage increases or any other increases until we were able to
20 settle the equal pay lawsuits.

21 Q It was your position you wanted to take care of
22 both things together, isn't that right?

23 A We would prefer to. We did not make that a
24 condition precedent to negotiations.

25 Q Did you offer any increases before you arrived

1 lze Dicker - cross 172

2 at a settlement of the lawsuits?

3 A The only offer we made on the contract before
4 the settlement of the lawsuits was an extension of the con-
5 tract for two or three years without any increases while
6 we negotiated the equal pay lawsuits.

7 Q So really as an economic bargaining measure you
8 were taking the position -- stop me if I'm wrong -- that
9 unless these equal pay suits were disposed of you were
10 not going to give us an increase, isn't that correct?

11 A Yes.

12 Q All right.

13 And it wasn't until after you arrived at a set-
14 tlement of the equal pay suits that you were able to take
15 care of or, rather, negotiate an equitable collective bar-
16 gaining agreement?

17 A It was done so simultaneously, Mr. Shelton,
18 that it was instantaneous; both.

19 Q All right. You said that the Shea, Gould firm
20 was representing the Union in connection with these negotia-
21 tions?

22 A Yes.

23 Q If the claims which the Unionmembers brought
24 against you generally, the RAB people, were settled and dis-
25 posed of, then there would be nothing left to your cross

claims against the Union, isn't that correct?

A I don't know. It would depend on the basis of the settlement.

Q On the basis of the settlement?

A On the basis of this settlement, there is a potential cross claim against the Union. We are paying a \$100 per employee to settle the back pay claims.

Q Yes and?

A And I would think that under the theory of our third-party complaints and on cross claims that that would be a potential liability of the Union if our theory was correct.

Q That wouldn't have provided any additional dollars for the members, would it?

A What wouldn't provide?

Q Your cross claims against the Union?

A No, it would have provided -- it would -- no, no additional dollars to the members.

Q So I take it your cross claims which were asserted against the Union, the only effect they would have would be to deplete the Union treasury, isn't that correct?

A No, it would determine who would pay the employees any back pay liability.

MR. SHELTON: I'm sorry, I didn't hear that, your

1 lze Dicker - cross

2 Honor, may I have the reporter repeat it.

3 (Answer read.)

4 MR. SHELTON: Could you read the question, so
5 I can see if the answer is correct?

6 THE COURT: You mean whether or not the answer
7 was responsive to your question.

8 (Record read.)

9 Q I repeat the question.

10 If you would have been successful in your cross
11 claims against the Union, it would have depleted the Union
12 treasury, wouldn't it?

13 A I don't know.

14 Q Who would have paid the judgment?

15 A I don't know.

16 Q You are not aware of it at all? Who were you
17 suing?

18 THE COURT: Well, Mr. Shelton, I don't think you
19 need to pursue this point.

20 Q Are you aware of the fact that the Union is an
21 unincorporated association?

22 A Yes.

23 THE COURT: Mr. Shelton, I think --

24 MR. SHELTON: I would respectfully call to
25 your Honor's attention --

2 THE COURT: Mr. Shelton, I'm not saying that
3 your point is not a good one. I think it is a legal point
4 which we can't --

5 MR. SHELTON: I agree with your Honor. May I
6 call to your Honor's attention the provisions of the General
7 Association Law of the State of New York, which provided,
8 in effect, that if there is a judgment against the Union,
9 it will deplete the Union treasury and if that isn't suf-
10 ficient to pay the judgment, then the plaintiff in the
11 lawsuit is permitted to go against the Union members to
12 recover the money individually.

13 I have no more questions of this witness.

14 I will give your Honor the precise sections
15 of the New York Business Law which incorporate those pro-
16 visions.

17 THE COURT: I'd appreciate that.

18 Miss Lowy, do you have anything further?

19 MS. LOWY: No, your Honor, we don't have any-
20 thing.

21 THE COURT: Mr. Dicker, thank you very much.

22 (Witness excused.)

23 THE COURT: Mr. Shelton, Miss Lowy, Mrs.
24 Pinzler, do you have anything else?

25 MR. SHELTON: I have nothing more, your Honor.

EXCERPTS FROM PLAINTIFFS' EXHIBIT 1,
COLLECTIVE BARGAINING AGREEMENT

her duties or from reduction in force, the employee shall receive, in addition to his or her accrued vacation credits, termination pay according to years of service on the following basis:

Employee with 5 and less than 10 years ... 1 week's pay
Employee with 10 and less than 12 years ... 2 weeks' pay
Employee with 12 and less than 15 years ... 3 weeks' pay
Employee with 15 and less than 17 years ... 6 weeks' pay
Employee with 17 and less than 20 years ... 7 weeks' pay
Employee with 20 and less than 25 years ... 8 weeks' pay
Employee with 25 years or more 10 weeks' pay

An employee who is physically or mentally unable to perform his or her duties may resign and receive the above termination pay provided he or she submits satisfactory evidence of such inability. If the Employer does not deem the evidence satisfactory, such question may be submitted to grievance and arbitration.

2. The right to accept termination pay and resign where there has been a reduction in force, shall be determined by seniority, i.e., termination pay shall be offered to the employee with the most seniority, then to the next most senior in point of service and so on until the offer is accepted. If no employee accepts the offer, the last employee or employees in seniority shall be terminated and shall receive the termination pay, if any, to which he or she or they are entitled. However, the Employer shall have the option of giving the employee with the least service on the job another comparable job, in order to avoid reduction in force.

3. "Week's pay" for the purpose of the above paragraphs shall be defined as the regular straight-time weekly pay at the time of termination. If the Employer offers part-time employment to the employee entitled to termination pay, he or she shall be entitled to termination pay for the period of his or her full-time employment, and if the employee accepts such part-time employment, he or she shall be considered a new employee for all pur-

poses. However, where an employee was placed on a part-time basis or suffered a reduction in pay because of a change in his or her work category prior to May 1, 1968, and did not receive termination pay based upon his or her former pay, "week's pay" shall be determined by agreement, or through grievance and arbitration.

XXXII. DAMAGE OR BREAKAGE

It is agreed that employees shall not be held liable for any damage or breakage occasioned by them in the course of their employment or for damage or loss to equipment unless negligence in cases of damage or loss to equipment is established.

XXXIII. UNION INSIGNIA

Employees may wear the Union insignia now in use while on duty.

XXXIV. NO DISCRIMINATION

1. There shall be no discrimination against any present or future employee by reason of race, creed, color, national origin, Union membership, or any unlawful discrimination because of sex.

2. No employee shall be employed through fee-charging agencies except where the Employer shall pay the full amount of the fee.

XXXV. CUSPIDORS

Employees will not be required to clean cuspidors.

XXXVI. UNIFORMS

1. Effective April 14, 1967, on all jobs with three or more Maintenance Cleaners I, the Employer must supply and maintain uniforms for such employees. The Employer shall also supply and maintain uniforms for all employees classified as Matrons.

EXCERPTS FROM PLAINTIFFS' EXHIBIT 2,
CONSTITUTION AND BY-LAWS

28 CONSTITUTION AND BYLAWS

assessment but the Union may further extend the time if considered advisable.

Article XXIV

Section 1. Any member failing to pay the dues and assessments of the Local Union on or before the last day of the month in which the same are due shall stand automatically suspended as a member of the Local Union and from all rights and privileges of such membership and suspended from International gratuity standing. A suspended member must pay the Local Union all back dues and assessments before being readmitted to membership.

Section 2. Members to be in good standing must have their dues paid on or before the end of the first month of their dues period as fixed and determined by the membership.

Article XXV

QUORUM

Fifty (50) members in good standing shall constitute a quorum for the carrying on of a general membership meeting. Seven (7) members in good standing shall constitute a quorum for the carrying on of a Shop meeting. Seven (7) members of the Executive Board in good standing shall constitute a quorum for the carrying on of a meeting of the Executive Board. Two-thirds of the mem-

LOCAL 32J SEIU

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bers in good standing of any committee shall constitute a quorum for the carrying on of a meeting of such committee.

Article XXVI

PROPERTY RIGHTS

Membership in this organization shall not vest any member with any right, title or other assets of this Local Union, now owned and possessed, or that may hereafter be acquired, and each member hereby expressly waives any right, title or interest in or to the property of this Local Union, including the funds of this Local Union.

The title to all property, funds and other assets of this Local Union shall at all times be vested in the Executive Board of this Local Union for the joint use of the membership of this Local Union, but no members shall have any severable proprietary right, title or interest therein.

Article XXVII

CONTRACTS AND AGREEMENTS

Section 1. Any and all contracts and agreements for and on behalf of Local 32J and its members shall be signed by the President. The President shall be and is the only person vested with such authority.

EXCERPTS FROM PLAINTIFFS' EXHIBIT 2,
CONSTITUTION AND BY-LAWS

30 CONSTITUTION AND BYLAWS

Section 2. The authority to bargain collectively for the Local Union shall be vested in a Negotiating Committee which shall consist of one officer and not less than three elected members, subject to the mandate of the membership.

Section 3. The results of any collective bargaining negotiations shall be subject to ratification by membership of the Local Union.

Section 4. For the purpose of maintaining a file, and for informational uses, copies of collective bargaining agreements and contracts entered into by this Local Union shall, after signing, be sent to the Research Department of the International Union.

Article XXVIII

DISSOLUTION

This Local Union cannot dissolve, secede or disaffiliate while there are seven (7) dissenting members. In the event of secession, dissolution or disaffiliation, all properties, funds and assets, both real and personal, of this Local Union shall become the property of the International Union. Under no circumstances shall this Local Union distribute its funds, assets or properties individually among its membership.

LOCAL 32J SEIU

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Article XXIX

CHARGES AND APPEALS

Section 1. Whenever charges are preferred against any member or officer of this Local Union, the charges shall be filed in writing in duplicate with the Recording Secretary. A written copy of such charges, specifying the nature of the offense of which he or she is accused, shall be served by the Recording Secretary upon the accused personally or by registered mail.

Section 2. The Executive Board shall be the Trial Board, except that where the member charged or preferring such charges is a member of such Board, the Executive Board shall appoint a disinterested member as a substitute.

Section 3. The decision of the Executive Board shall be deemed final unless the individual or individuals against whom said decision shall have been rendered files with the Recording Secretary a written request to appeal the decision of the Executive Board to the general membership of the Local Union within fifteen (15) days, in accordance with the provisions of Article XVI, Section 2 (d) of the International Constitution, and further appeal shall be in accordance with said Article.

PLAINTIFFS' EXHIBIT 4, CONSENT TO SUE

CONSENT TO BE JOINED AS PARTY
PLAINTIFF TO PROSECUTE CLAIMS
AGAINST EMPLOYER PURSUANT TO
29 U.S.C. 5216(b)

I, _____, do hereby give
my consent to be joined as a party plaintiff in any action brought
by _____ an employee of _____
on behalf of herself and other employees similarly situated and I do
give my consent to her to prosecute by suit or otherwise on my
behalf any claims against _____, (or
any other party liable to me) which I may have for wages due and owing
me resulting from the failure of _____, or
any of its subsidiaries or affiliated companies, to pay me wages equal
to that paid male employees to which I believe I was entitled as a
matter of law under the Fair Labor Standards Act as amended by the
Equal Pay Act of 1963 together with liquidated damages pursuant to
Section 16(b) of the Act.

I, furthermore, hereby retain, employ and authorize the law
firm of Shea Gould Climenko and Kramer to prosecute my claims for
equal pay. I agree to pay said law firm for its services in connec-
tion with the recovery of said wages due for equal work an amount
equal to twenty-five per cent (25%) of whatever amount is recovered
for me, by compromise or otherwise. If the Court in any suit brought
pursuant to this agreement renders a judgement in which there is
included an allowance of counsel fees to the law firm of Shea Gould
Climenko and Kramer, this amount of said allowance shall be applied
in diminution of the aforesaid attorney's fees.

Date

Signature

Address and Apartment Number

Phone Number

EXCERPTS FROM PLAINTIFFS'
EXHIBIT 6, MINUTES OF
FEBRUARY 7, 1974

EXECUTIVE BOARD MEETING
THURSDAY, FEBRUARY 7, 1974

MINUTES OF THE EXECUTIVE BOARD MEETING OF THURSDAY,
FEBRUARY 7, 1974 held at Union Headquarters, 237-241 East
36th Street, New York, New York at 3:00 P.M.

* * *

Regarding The Macke Company, President Baumann reported that several meetings had been held with this company in an endeavor to negotiate a collective bargaining agreement covering our members employed at the First National City Bank Building at 399 Park Avenue. The Union's position has been that our members are entitled to equal pay with the male maintenance employees in the building. The Macke Company has refused to give us equal pay and our last meeting with them was on January 29, 1974. In accordance with the authority granted us by the members employed in the building to strike if the employer refused to agree to equal pay, the Union, on January 30, 1974 initiated a strike action against The Macke Company at 399 Park Avenue and such strike is still in progress. This is the first step in a program to secure equal pay for all female members of Local 32J. On

EXCERPTS FROM PLAINTIFFS'
EXHIBIT 6, MINUTES OF
FEBRUARY 7, 1974

January 17, 1974 the National Labor Relations Board refused to issue a complaint on Macke's unfair labor practice charge against Local 32J.

* * *

Regarding our fight for equal pay, our lawyers believe that we have a strong case in demanding equal pay for females and he asked the support of the Executive Board in this struggle. Motion was made and seconded that Local 32J continue its fight to obtain equal pay for all female members. (Motion by W. Fugowski; seconded by L. Smith). There being no objections, motion was carried unanimously.

* * *

CONSENT TO SETTLEMENT AND RELEASE

I am a member of Local 32J and a plaintiff in a lawsuit commenced against my present or former employers by Shea Gould Climenko Kramer & Casey, in which I claim that I should receive a rate of pay equal to the rate of pay given to male cleaning and maintenance employees in the building where I work. I have received a copy of the terms of a proposed settlement of my lawsuit and of the other lawsuits brought by my attorneys on behalf of other members of Local 32J. This settlement is being recommended to me and other employees of Local 32J by our attorneys. I have read and understand the settlement, and have been given an opportunity to ask questions of my counsel about it.

In return for this settlement and its benefits, I consent to the terms of the settlement and I authorize my attorneys to enter into it on my behalf and to consent to the entry of a judgment in my lawsuit embodying the terms of the agreement.

I also waive, discharge and release all claims which I may have against my present or former employers for any alleged violation of law with respect to equal pay, including but not limited to, the Equal Pay Act and Title VII of the Civil Rights Act of 1964, except for the claims which the employers agreed to pay in accordance with the terms of the settlement agreement.

I understand that an action has been commenced by Darlene K. Willis against Allied Maintenance Corporation and others. I have been given a copy of the complaint in that lawsuit and I have been given an opportunity to ask questions about the claims made in the lawsuit. I understand that the plaintiff Willis claims to represent me and other members of Local 32J in that suit. I understand that, by consenting to the settlement of my lawsuit, I may also be releasing claims which Darlene K. Willis has brought on my behalf.

CONSENT TO SETTLEMENT AND RELEASE

I am a member of Local 32J and I am aware of the lawsuits commenced against my present, former, and/or other employers by Shea Gould Climenko Kramer & Casey, in which it is claimed that Local 32J members should receive a rate of pay equal to the rate of pay given to male cleaning and maintenance employees in the building where I work. I have been advised that a proposed settlement of these lawsuits has been reached. I have received a copy of the settlement, which I have read and understand. I have also been given an opportunity to ask questions of counsel about it.

In return for the settlement benefits which I will receive, I waive, discharge and release all claims which I may have against my present or former employers for any alleged violation of law with respect to equal pay, including but not limited to, the Equal Pay Act and Title VII of the Civil Rights Act of 1964, except for the claims which the employers agreed to pay in accordance with the terms of the settlement agreement.

I understand that an action has been commenced by Darlene K. Willis against Allied Maintenance Corporation and others. I have been given a copy of the complaint in that lawsuit and I have been given an opportunity to ask questions about the claims made in that lawsuit. I understand that Willis claims to represent me and other members of Local 32J in that suit. I understand that by signing this release, I may also be releasing claims which Willis has brought on my behalf.

In addition, you will have the right to make claims for immediate or past equal pay against a special fund which will be set up under the Agreement and which will be administered by the special arbitrator mentioned below.

We have recommended that you consent to the Agreement because it gives you some immediate benefits and guarantees you equal pay by the end of the contract period without the necessity of legal proceedings which would take many years to complete and which you might or might not win. In addition, if you were to recover the full amount which has been claimed in the equal pay lawsuits, many of the employers in the real estate industry might go bankrupt, would be unable to pay the judgments and would be forced to discharge many of their employees. The Agreement also guarantees that you will not be required to do any different work from that which you are presently required to do and prohibits your employer from establishing any general job categories based on "heavy" or "light" work.

In addition, you should know that, by consenting to the Agreement, you may be giving up claims which Darlene Willis, one of our members, is trying to make on behalf of some of our members in a lawsuit against Allied Maintenance Corporation, and others, including Local 32J. We distributed copies of the complaint in Ms. Willis' lawsuit with the Settlement Agreement. In her lawsuit, Ms. Willis claims that the women members of Local 32J employed by Allied have not been given an opportunity to do work which pays the same wages as the men receive or provides the same benefits, that they have not been given the opportunity to work the same hours as the men, and that they are entitled to equal pay immediately and to back pay for Allied's past failure to give them equal pay. Ms. Willis claims that the Union has not represented its female members properly because it has not obtained equal pay for them. Ms. Willis also makes other claims and you should read her complaint carefully.

Following is a more detailed description of the Agreement and the Darlene Willis complaint.

A. THE AGREEMENT

In order to settle the claims for equal pay fairly and without further legal proceedings and without causing the possible bankruptcy of many employers or layoffs of many employees in the real estate industry, the parties agree to the following terms:

* * *

6. Subject to the approval of the Court, the defendants will pay to Shea Gould Climenko Kramer & Casey, attorneys for the plaintiffs in the Equal Pay lawsuits, attorneys' fees and costs in the total amount of \$300,000. The individual members of Local 32J will not be required to pay any attorneys' fees or costs.

7. The Agreement also gives the members of Local 32J certain other benefits relating to the terms and conditions of employment, including increases in life insurance, pension and medical insurance.

None of the benefits of the Agreement will be payable until all plaintiffs in the equal pay lawsuits and all female members of Local 32J as of January 1, 1975, minus 100 (exclusive of those deceased, employed on "commercial jobs" or who cannot be located) have signed consents to be bound by the settlement Agreement and until all pending lawsuits brought by Shea Gould Climenko Kramer & Casey have been dismissed with prejudice. If more than 100 members as of January 1, 1975 who are also not plaintiffs in the various equal pay cases do not sign, then whether or not the Agreement will go into effect is subject to arbitration. If any employer refuses to join in this settlement, the lawsuit against him will not be dismissed.

B. THE DARLENE WILLIS ACTION

The Darlene Willis action has been brought by a member of Local 32J purporting to represent all present and past female members of Local 32J who are or were employed to perform cleaning and maintenance services by Allied Maintenance Corporation or any of its subsidiaries. Darlene Willis has sued Allied Maintenance Corporation and several of its subsidiaries, Local 32J, Local 32B, the Service Employees International Union, the Realty Advisory Board on Labor Relations, Inc. and The Building Service League alleging that Allied has violated certain laws by following a policy of segregating women into a category of jobs which receive lower pay and lesser benefits than similar jobs performed by men; that Local 32J and Local 32B are sex segregated unions and that the defendants including Local 32J have conspired to deprive Darlene Willis and other women employed by Allied of their civil rights. The complaint also alleges that Local 32J and the other unions have breached their duty to represent their members fairly.

EXCERPTS FROM PLAINTIFFS'
EXHIBIT 13, LETTER DATED 10/3/75

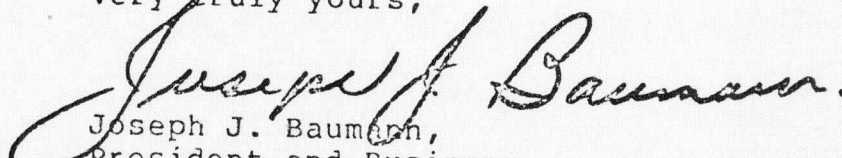
If Darlene Willis succeeds in her lawsuit on her claims for equal pay, Allied employees could receive equal pay immediately after a final judgment although, with appeals, this might not occur for several years. The women represented by Darlene Willis might also receive an award for damages for a period beginning three or more years prior to the institution of the Willis action. Other women members of Local 32J not employed by Allied would not be entitled to an award of back pay or equal pay until their own claims were litigated.

If you have any questions regarding the settlement Agreement or Darlene Willis' complaint, please contact your Union or plaintiffs' legal counsel, Shea Gould Climenko Kramer & Casey, (212) 661-3200, extension 238, or counsel of your choice.

If you have already given a consent to the settlement, but after reading this summary, you feel that you do not want to join in the proposed settlement, you may revoke your consent by contacting the Union delegate or shop steward to whom you gave your consent or Shea Gould Climenko Kramer & Casey at the above telephone number. Your Union delegate will have a form which you can sign to revoke your consent.

Unless you revoke your consent within 15 days of the date of this letter, it will be assumed that you do not intend to revoke your consent.

Very truly yours,


Joseph J. Baumann,
President and Business
Manager



NATIONAL LABOR RELATIONS BOARD

REGION 2

Federal Building, Room 3614, 26 Federal Plaza

New York, New York 10007

Telephone 264-0300

September 11, 1972

Miss Darlene K. Willis
118 Corson Avenue
Staten Island, New York 10301

Local 32-J Building Service
Employees Union, AFL-CIO
Re: (Allied Maintenance Company)

Case No: 2-CB-5204

Dear Madam:

Your charge in the above-entitled case alleging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the charge are warranted.

The evidence does not tend to establish that the above-named Union violated the National Labor Relations Act by its conduct in connection with your grievance relating to your present work load. The evidence discloses that the Union considered the merits of your complaint and informed you that the amount of space allocated by your Employer to you to clean was not, in its opinion, unreasonable, and was in fact, less than that assigned to many other employees working in the same building. No evidence was adduced that the Union, in making this determination, was motivated by arbitrary, invidious, or otherwise unlawful considerations. In addition, it appears that within the past year and a half the Union did process a grievance of yours to the arbitration stage. Further, there is no evidence that the Union violated the Act in any other manner encompassed by your charge. I therefore am refusing to issue a complaint in this matter.

BEST COPY AVAILABLE

EXCERPTS FROM PLAINTIFFS' EXHIBIT 16,
NLRB DETERMINATION

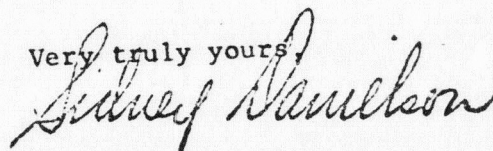
VO

- 2 -

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C. by the close of business on **September 25, 1972.** Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity of filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,



Sidney Danielson
Acting Regional Director

Enc.

REGISTERED MAIL
R.R.R.

cc: General Counsel
National Labor Relations Board
Washington, D. C. 20570

Local 32-J Building Service Employees Union, AFL-CIO
Attention: Joseph Baumann, Vice-President
237-241 East 36th Street, New York, New York 10016

Allied Maintenance Company, Attn: William C. Pitts, Jr., V.P. Labor Relations
2 Pennsylvania Plaza, New York, New York 10001

Shea Gould Climenko & Kramer, Attn: Jerome D. Grant, Esq.
330 Madison Avenue, New York, New York 10017

Ti-Grace Atkinson
Human Rights for Women, Inc.
109 East 79th Street, New York, New York 10021

EXCERPTS FROM PLAINTIFFS' EXHIBIT 17,
N.Y. STATE DIVISION OF HUMAN RIGHTS
DETERMINATION

DETERMINATION AND ORDER AFTER INVESTIGATION

Case No. Ia-Cs-865-70: Darlene K. Willis vs. Local 32J, Building Service Employees International Union and Walter J. Fugowski, Business Agent; and Allied Maintenance Corp.; Fred Nelson, Foreman, and Victor LaGuarino, Field Supervisor

On September 25, 1970, Darlene K. Willis, who is a woman, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment by denying her equal terms, conditions and privileges of her employment because of her sex, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights determined that there is no probable cause to believe that the respondents have engaged or are engaging in the unlawful discriminatory complained of. The complainant has worked as one of 31 cleaning women for the respondent company on the 13th floor of 20 Pine Street for the last 3-1/2 years. Cleaning women, members of the respondent union, are assigned to the general housekeeping chores: dusting, emptying baskets, removing fingerprints, and caring for floors to the extent that they are swept, dry mopped or vacuumed. Women's assignments are based on the square footage of the area to be cared for. Cleaning men (there are 21 at this location) are members of another union (32B) and are assigned as crews to such

EXCERPTS FROM PLAINTIFFS' EXHIBIT 17,
N.Y. STATE DIVISION OF HUMAN RIGHTS
DETERMINATION

heavier tasks as buffing, waxing, mopping, cleaning toilets and public halls and staircases. The evidence reveals that whereas the men agreed to come into work earlier on holidays (thus, being able to leave earlier) many of the women, because of other commitments, could not change their hours and thus all women had to report at the usual hour. Two conferences were scheduled by this Division because the respondent union could not appear at the first conference. The complainant refused to come into the conference room on the adjourned date on the advice of "Human Rights for Women, Inc." The respondent union produced evidence that it has investigated each complaint and/or grievance filed by the complainant and has attempted to adjust them but has been thwarted due to the complainant's arbitrary behavior.

Upon the foregoing, the complaint is ordered dismissed and the file is closed.

The complainant or any party to the proceeding before the Division may appeal this order to the State Human Rights Appeal Board, 250 Broadway, New York, New York 10007, by filing a notice of appeal within fifteen (15) days after the date of the mailing of this order.

Dated: November 6, 1970

STATE DIVISION OF HUMAN RIGHTS

By: s/ Albert Herchick
Albert Herchick
Regional Manager Ia

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EXCERPTS FROM PLAINTIFFS' EXHIBIT 17,
N.Y. STATE DIVISION OF HUMAN RIGHTS
DETERMINATION

BUILDING SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 32J
237-241 East 26th Street
New York, New York
Attn: Mr. Walter J. Fugowski
Business Agent

TO:

Mrs. Darlene K. Willis, complainant
118 Corson Avenue
Staten Island, New York 10301

Allied Maintenance Corp., respondent
2 Pennsylvania Plaza
New York, New York 10001
Attn: Mr. Fred Nelson
Foreman

Emanuel Dannett, Esq.
Graubard, Moskovitz, McGoldrick,
Dannett & Horowitz
345 Park Avenue
New York, New York 10022

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2 a stated number in quotes.

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3 I don't know what the stated number is.

4 MR. DANNETT: There is a separate letter stating
5 that the number is 20.

6 THE COURT: So that will be defined separately?

7 MR. DANNETT: That's correct, sir, on the numbers
8 point.

9 THE COURT: Mr. Finneran, I would be glad to
10 hear you, except I am not sure whether this is the right
11 time.

12 This is not a settlement that you are partici-
13 pating in.

14 MR. FINNERAN: I recognize that, your Honor,
15 and, therefore, I will limit all my remarks exclusively to
16 the form of the notice and will refrain from any comment
17 with regard to the quantum or what we would consider to
18 be the benefit of the individual items of settlement.

19 Your Honor, we represent --

20 MISS LOWY: I would just like to point out to your
21 Honor that Mr. Finneran is not an attorney of record for
22 any party in this proceeding and whereas, you know, we were
23 somewhere surprised to see him here, I have serious ques-
24 tions to what his role is in commenting on the notice or
25 the settlement.

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2 THE COURT: So am I.

3 What is your role?

A 176

4 MR. FINNERAN: Yes, your Honor.

5 My firm individually represents every individual
6 in the purported class.

7 MISS LOWY: Not for purposes of our lawsuit, your
8 Honor.

9 THE COURT: Do you mean the plaintiffs or the
10 defendants?

11 MR. FINNERAN: All the plaintiffs.

12 These documents, as I understand it, as presented
13 to this court --

14 THE COURT: I take it, Mr. Finneran, if you are
15 representing people who will become members of the class
16 which is created by this settlement, if it is approved by
17 me, you will have plenty of opportunity in due course to
18 object to the settlement on behalf of anybody that you
19 represent who becomes a member of the class.

20 MR. FINNERAN: I agree with that, your Honor.

21 THE COURT: I don't think this is the right time
22 to do it.

23 MR. FINNERAN: I would like to go one step further
24 and maybe after your Honor listens he will decide that it
25 would be appropriate to consider what we want to offer to

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2 you.

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3 We believe that the notive is factually incorrect
4 as to what it sets forth to the people who I represent and
5 should factually be modified in order that the purported
6 class be fully apprised of what is happening or what is
7 about to happen in this proposed settlement.

8 THE COURT: Mr. Finneran, if that is what you are
9 getting at, I am not going to hear you on that now.

10 MR. FINNERAN: All right. And one other statement,
11 your Honor, if I may.

12 THE COURT: Yes.

13 MR. FINNERAN: Okay.

14 The people involved, the women involved in the
15 proceedings that have transpired to date are many foreign
16 born and speak various assortment languages.

17 All through our proceedings we have informed
18 them in five languages of what was to happen and all through
19 the proceedings we have given them --

20 THE COURT: Now, what about that, Miss Lowy?

21 MR. DANNETT: May I answer that, your Honor?

22 We have an understanding with Miss Pingler and
23 Miss Lowy that they will be translated in five languages
24 and it will be transmitted in five languages.

25 MR. FINNERAN: We have another statement that

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2 we would like to make to the court, and that is that in
3 all instances we have prepared exact statements by which
4 an individual could withdraw their agreement to be bound
5 and we believe, like in this document, the members of the
6 purported class would have a like opportunity.

7 In other words, they have to give two notices,
8 as I read the documents --

9 THE COURT: Mr. Finneran, again, that seems to me
10 to be outside the scope of what we are dealing with now.

11 If the people wanted to object to this proposed
12 consent decree and this notice, you, as their attorney,
13 can tell them how to go about it.

14 I am not going to change this notice because
15 you think that you have clients who may be in the class
16 who should be assisted in this proceeding.

17 I understand what you are getting at. You
18 are trying to save time down the road. I assume that is
19 your objective. But, no, I am not going to permit you to
20 argue these points any further.

21 MR. FINNERAN: All right.

22 I have come prepared just to resolve the matter
23 completely to point out to the court the areas that I con-
24 sider to be unclear, vague and inaccurate in presentation.

25 THE COURT: No, I am not going to hear you on this.

1 gth

2 I take it that you had an opportunity to present
3 these to counsel for the parties in this lawsuit?

4 MR. FINNERAN: That is just the problem, your Honor.

5 MR. DANNETT: He is not party to this lawsuit.

6 MR. FINNERAN: I asked Mr. Dannett for an opportu-
7 nity to review the documents, and Mr. Dannett, I believe,
8 had told me he was going to let me review the documents.

9 THE COURT: Look, there is this lawsuit.

10 MR. FINNERAN: I realize that. It affects the
11 people I represent, your Honor.

12 THE COURT: You will have full opportunity when
13 the people you represent become members of a class if, in-
14 deed, they do, to present your point of view, and I think
15 that's the best time to do it from a procedural standpoint.

16 MR. FINNERAN: I am not disagreeing with your
17 Honor.

18 THE COURT: If these people want to hear you now,
19 it seems to me it might be in the interests of making things
b3 20 easier down the road, but that is their problem, not mine.

21 MR. FINNERAN: I just want to tell your Honor
22 that we had called Mr. Dannett and we had spoken with Mr.--

23 THE COURT: And Mr. Dannett acknowledges that
24 you called him and he thanks you very much.

25 MR. FINNERAN: Thank you very much.

